Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0967.
Form Number: IRS Form 8453–F.
Type of Review: Revision.
Title: U.S. Fiduciary Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.
Description: This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 minutes.
Learning about the law or the form.	4 minutes.
Preparing the form	18 minutes.
Copying, assembling, and sending the form to the IRS.	20 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 810 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 92–15511 Filed 7–1–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0144.
Form Number: IRS Form 2438.
Type of Review: Revision.
Title: Regulated Investment Company Undistributed Capital Gains Tax Return.
Description: form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)(3)(D). IRS uses this information to determine the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hours, 8 minutes.
Learning about the law or the form.	35 minutes.
Preparing and sending the form to the IRS.	46 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 948 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 92–15513 Filed 7–1–92; 8:45 am]
BILLING CODE 4830–01–M

Fiscal Service

Renogotiation Board Interest Rate; Prompt Payment Interest Rate; Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board. (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1992 and ending on December 31, 1992, is 7% per centum per annum.

Dated: June 25, 1992.

Marcus Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 92–15488 Filed 7–1–92; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 30, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations concerning administrative enforcement proceedings.

Request by a financial institution relating to the cross-guaranty provisions of the Federal Deposit Insurance Act.

Matters relating to certain financial institutions.

Matters relating to the Corporation's assistance agreement with an insured bank.

Matters relating to the Corporation's corporate activities.

Personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: June 30, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–15772 Filed 6–30–92; 3:54 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 7, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to U.S.C. § 437g, § 438g, § 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 9, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Title 26 Certification Matters

Advisory Opinion 1992–19:
JoAnne Waldum of the Mike Kreidler for Congress Committee

Advisory Opinion 1992–20:
Frederick T. Spahr of ASHA-PAC

Advisory Opinion 1992–20:
Frederick T. Spakr of ASHA–PAC

Advisory Opinion 1992–25:
Clay Newton of Owens for Senate Committee

Draft Final Rule with E&J on Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committee

Revised MCFL Notice of Proposed Rulemaking

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 92–15771 Filed 6–30–92, 3:42 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Inviting Grant Applications for Innovative Concepts Program

Correction

In notice document 92-14018 beginning on page 26652 in the issue of Monday, June 15, 1992, make the following corrections:

1. On page 26652, in the third column, the subject heading should read as set forth above.

2. On page 26653, in the second column, under **ADDRESSES AND FURTHER INFORMATION**, in the fifth line, "(202) 553-2166)" should read "(206) 553-2166".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92-186-000]

Texas Gas Transmission Corp.; Petition for Limited Waiver

Correction

In notice document 92-14041 appearing on page 26841 in the issue of Tuesday, June 16, 1992, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30695; International Series Release No. 386; File No. SR-NASD-92-18]

Self-Regulatory Organizations; National Association of Securites Dealers, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a 6-Month Period

Correction

In notice document 92-11639 beginning on page 21316 in the issue of Tuesday, May 19, 1992, on page 21316, in the second column, after the subject heading insert "May 13, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. ROS-2, Notice No. 1]

RIN 2130-AA48

Bridge Worker Safety Rules

Correction

In rule document 92-14566 beginning on page 28116 in the issue of Wednesday, June 24, 1992, make the following correction:

On page 28116, in the first column, in the **EFFECTIVE DATE** paragraph, "August 24, 1992" should read "July 24, 1992".

BILLING CODE 1505-01-D

federal register

Thursday
July 2, 1992

Part II

Securities and Exchange Commission

17 CFR Parts 229, 240 and 249

Regulation of Communications Among Securityholders and Executive Compensation Disclosure; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

Release Number 34-30849; IC-18803 [File No. S7-15-92]

RIN 3235-AE12

Regulation of Communications Among Securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Revisions of proposed rules.

SUMMARY: The Securities and Exchange Commission is revising its proposals, published June 25, 1991, (56 FR 28987) to amend the proxy rules under section 14(a) of the Securities Exchange Act ("Exchange Act"). As originally proposed, and as reproposed today, these amendments are intended to facilitate shareholder communications and to enhance informed proxy voting, and to reduce the cost of compliance with the proxy rules for all persons engaged in a proxy solicitation. The revised proposals described below are in response to the over 900 comment letters received by the Commission and other public commentary with respect to the June proposals and the proxy voting process.

DATES: August 31, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-15-92. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Chief, and Jane K.P. Tam, Attorney, Office of Tender Offers ((202) 272-3097), Catherine T. Dixon, Chief, and Elizabeth M. Murphy, Attorney, Office of Disclosure Policy ((202) 272-2589) Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to revise Rules 14a-1(*l*), 14a-2(b), 14a-4 (a), (b)(1) and (d), 14a-6 (a), (c)-(f), (i) and (j), 14a-7 and 14a-11(c), 14a-12, 14c-5 and Item 21 of Schedule 14A and Item 5 of Schedule 14C and Forms 10-K and 10-Q under the Exchange Act; to add new Rule 14a-3(f), and Notice Form 14; and to delete Rules 14a-6(b) and 14a-11(d) and (e).

First, proposed exemptive Rule 14a-2(b)(1) has been revised to require public notice of written solicitations made in reliance on the exemption. The categories of persons excluded from the exemption has been expanded to include persons required to file a Schedule 13D, unless they have filed and have not disclosed an intent, or reserved the right, to engage in a control transaction. Second, the Commission is reproposing to amend Rule 14a-6 to eliminate the preliminary filing of all soliciting material other than proxy statements and the form of proxy. Third, the Commission is reproposing to provide that preliminary proxy material and information statements be public upon filing. The reproposal, however, would permit specified proxy and information statements required to comply with Item 14 of Schedule 14A (Mergers, Consolidations, Acquisitions and Similar Matters) to be filed confidentially, unless subject to the Commission's roll-up rules or the going private rule—Rule 13e-3 under the Exchange Act.

Fourth, the Commission is reproposing with significant modifications amendments to Rule 14a-7, the mailing and shareholder list rule. The principal modification is to continue to allow registrants the election to mail soliciting materials, rather than provide a list of shareholders, except in the case of rollups and going private transactions. Disclosure is proposed for the registrant's proxy statement, at the suggestion of several commenters, of denials of shareholder requests for a stockholder list. The reproposal would clarify the registrant's obligation to advise requesting shareholders of the number and costs of mailing to subgroups of shareholders as specified by the requesting shareholder. The registrant would no longer be permitted to delay mailing the shareholder's materials until the registrant is ready to mail its materials. The proposal also has been revised to provide that an issuer that chooses or is required to deliver a list need not solely for the purposes of Rule 14a-7 compile a list of nonobjecting beneficial owners upon the request of a shareholder. Finally, the proposal would require a sworn certification of proper purpose by the requesting shareholder.

The Commission is proposing additional amendments to the proxy and reporting rules to facilitate further shareholder communications and to enhance the efficacy of the shareholder franchise. The Commission is proposing to amend the definition of "solicitation" to make clear that an announcement by a shareholder of how it intends to vote, and why, is not a solicitation.

The Commission is proposing to expand the provisions of the rules that permit a solicitation for an election contest or other specified actions to begin prior to delivery of a proxy statement, to all solicitations. In addition, a soliciting party would be permitted to publish in a newspaper, participate in a broadcast, or give a speech without having to bear the cost of delivering a proxy statement to all shareholders solely on the basis of such action. The obligation to file a proxy statement would not be affected by this proposed revision to the proxy statement delivery rule.

The Commission is proposing to amend the rule governing the form of proxy to require the party soliciting with regard to a group of related proposals, to set out each proposal separately on the form of proxy to allow for a separate vote on each matter. The proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals. The Commission is also proposing to amend its definition of "bona fide nominee" to permit shareholders seeking to nominate less than a majority of the board to solicit proxies carrying one or more of management's nominees on the shareholder's form of proxy. This amendment is intended to eliminate a regulatory obstacle to shareholders obtaining minority representation on the board of directors.

Disclosure requirements of Schedule 14A are proposed to be amended to codify the required disclosure of how abstentions will be counted. Forms 10-K and 10-Q are proposed to be amended to require complete disclosure of the results of all shareholder votes.

Finally, the Commission is publishing for public comment a proposal that is the subject of a rulemaking petition submitted by Edward V. Regan, Comptroller of the State of New York, that would permit shareholders holding a specified amount of the company's stock to have included in the registrant's proxy statement a statement of their views regarding the long-term performance of the company and the effectiveness of management and the board of directors in promoting such performance and increasing shareholder values.

I. Executive Summary

The proposals published today for comment follow upon an extensive examination by the Commission, through dialogue with and comment from issuer, shareholder, academic, legal and other interested groups, with

regard to the effectiveness of the proxy-voting process and its effect on the corporate governance system in this country. Within the ambit of this broad examination, the Commission has focused on the role of its proxy and disclosure rules in impeding shareholder communication and participation in the corporate governance process, in order to further Congress' intent to assure fair, informed and effective shareholder suffrage.

Based on the record compiled by the Commission both prior to and in response to the issuance of its June 1991 proposals,[1] as well as comments made in public forums [2] and congressional hearings, the Commission continues to believe that the Commission's rules create unnecessary regulatory impediments to free and open shareholder communication and effective use of the shareholder franchise, and that change is necessary.

The revised proposals as well as the proposals published for the first time today, are intended to reduce these burdens. The new proposals build upon the revisions to the proxy statement filing and dissemination requirements proposed in June 1991, and are intended to remove regulatory obstacles to widespread, public dissemination of shareholder views and to minimize regulatory interference with the form and content of soliciting communications.

Other proposals—the change to the bona fide nominee rule and the unbundling of related proposals—are aimed at eliminating unnecessary burdens on shareholders' effective use of their franchise. The Commission's proposal includes revisions to clarify and enhance the disclosures provided shareholders in the context of a solicitation as well as in the reporting of voting results.

A. Background

In June 1991, after two years of study of its proxy rules and the proxy voting process, the Commission published four amendments to its proxy rules that would:

1. Permit shareholders and other persons to exchange views or comment on a proxy solicitation undertaken by the company, or any other person, without having to file with the Commission or deliver a proxy statement to solicited shareholders;

2. Eliminate SEC preclearance of all soliciting material other than the proxy statement and form of proxy;

3. Make public all soliciting material filed in preliminary form immediately upon filing, like all other Commission filings; and

4. Condition management's solicitation of proxies on shareholders being given equal access to stockholder list information for purposes of the shareholder's solicitation.

To date the Commission has received more than 900 letters of comment in response to its June 1991 release.[3] Commenters include approximately 600 individual and institutional holders of equity securities in corporations and limited partnerships, more than 210 registrants or registrant organizations, legislators at both the state and federal levels, a number of law and business professors, and lawyers.

The proposals were subject to opposition from the corporate community who argued that the Commission was attempting to fix a system that wasn't broken and indeed was working quite well. These commenters contended that not only were the proposals unnecessary, but that their adoption would "further the disturbing trend toward the determination of the outcome of shareholder voting by secret back-room lobbying of and negotiations with institutional investors, rather than in open and public proxy campaigns." [4] Institutional shareholders, academics and most individual investors, on the other hand, generally commended the Commission's efforts but urged the Commission to go further in reducing what the commenters saw as impediments to effective communication and voting that remained unaddressed by the Commission's proposals—such as the bona fide nominee rule, access to the proxy statement and nomination of directors, executive compensation, confidential voting and independent tabulation.

Aside from those commenters taking the position that there appeared to be no need for a change, commenters generally supported the basic thrust of the proposals with suggested revisions and refinements, a number of which are incorporated in today's reproposals.

B. The Revised Proposals

Of the four proposals published in June 1991, the first—new exemptive Rule 14a-2(b)(1)—drew the most comment. The proposed exemption would have allowed shareholders to comment on an issuer's or another shareholder's proxy solicitation without having to file with the Commission or deliver a proxy statement provided that: (1) the commenting shareholder was not soliciting a proxy authorization, (2) did not have a material economic interest in the subject matter of the solicitation (other than as a shareholder or employee), and (3) was not acting on behalf of such person. Under the proposal, the exempt solicitation would remain subject to the antifraud prohibitions of Rule 14a-9.

In response to concerns raised with respect to the need for public notice of extensive soliciting activity, the revised proposal would provide for such public notice by (1) publication (including issuance of a press release) or broadcast in general media, or (2) submission to the Commission of written soliciting material. Based on concerns for interference with free and open discussion concerning the company or its management, the Commission is not proposing to require that a notice of oral solicitation be submitted to the Commission.

No significant change has been made to the proposal to eliminate preliminary filing of soliciting materials other than proxy statements and the form of proxy. Comment is again solicited as to whether certain additional classes of proxy statements should be excused from SEC preclearance.

The proposal to require all preliminary proxy material and information statements to be public upon filing is being reproposed with one substantive revision. Under the reproposal, a company would be able to obtain confidential treatment of a preliminary proxy and information statements where the filing is subject to Item 14 of Schedule 14A (Mergers, Consolidations, Acquisition and Similar Matters),[5] the transaction has not yet been publicly announced, and the filing is not subject to the Commission's roll-up rules [6] or the Commission's going private rule, Rule 13e-3.[7]

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[1] Exchange Act Release No. 29315 (June 17, 1991).

[2] The Commission sponsored a two-day public forum on these issues on March 18-19, 1992. A transcript of those proceedings has been included in the public file with respect to the June 1991 proposals [S7-22-91].

Prior to publication of the June release, the Commission and staff received more than 50 letters proposing changes to the Commission's proxy and disclosure rules, or commenting on such proposals. More than 500 letters were submitted by individual members of United Shareholders of America, in support of a rulemaking petition submitted by that organization. These letters are included in Public File No. 4-353.

[3] The comment letters and a staff summary of the letters may be inspected and copied at the Commission Public Reference Room (File No. S7-22-91).

[4] Comment letter submitted by The Business Roundtable, dated September 18, 1991, at 2.

[5] 17 CFR 240.14a-101.

[6] 17 CFR 229.901-229.915.

[7] 17 CFR 240.13e-3.

The Commission's proposed amendments to the shareholder mailing and list rule, Rule 14a–7,[8] are being reproposed with substantive revisions. First, except in the case of roll-ups and going private transactions, registrants will continue to have the ability to mail materials for the soliciting shareholders, rather than provide a shareholder list pursuant to Rule 14a–7. A registrant electing to mail will be required to mail to any subset of shareholders specified by the requesting shareholder. At the suggestion of several commenters who urged continued registrant discretion to mail, however, the registrant will be required to provide disclosure in the proxy statement of a decision to deny access to the list.

Second, the registrant will no longer be permitted to delay mailing the shareholder's materials until the registrant is ready to mail its own materials. Third, where the registrant elects or is required to provide the list, a requestor will be required to provide a certification of proper business purpose in the form of an affidavit, declaration or other sworn statement. Fourth, the amendments will no longer require a registrant to compile a NOBO/COBO list at the request of a shareholder, although a registrant providing a shareholder list will be required to deliver any such list in the registrant's possession and any other beneficial ownership information used by the registrant in its solicitation. Finally, the proposal would make clear that a request for a list will trigger the registrant's Rule 14a–7 obligations.

The Commission is proposing additional amendments to the proxy rules to address concerns raised in the comment letters and ongoing public discussion of the proxy process. The definition of solicitation would be amended to eliminate any doubt that a shareholder can make a public announcement of how it intends to vote and provide the reasons for that decision without having to comply with the proxy rules.

The Commission is proposing to extend to all solicitations the provisions of its rules that permit election contests and other contested solicitations to commence prior to filing and delivery of a proxy statement to a solicited shareholder. As with the current rule, any such pre-proxy statement solicitation would have to include specified disclosures concerning the soliciting party and no form of proxy could be provided until a definitive proxy statement is filed and delivered to the shareholder. Similarly, the Commission is proposing to revise the proxy statement delivery requirements under Rule 14a–3 to permit a soliciting party to publish material in a newspaper or participate in a broadcast, or give a speech, without automatically triggering the obligation to deliver a proxy statement. The obligation to file a proxy statement will be unaffected by the change to Rule 14a–3.

The Commission is proposing to amend Rule 14a–4 to require the form of proxy to set out each matter in a group of related matters separately on the form of proxy to allow for a separate vote on each matter.[9] The purpose of the Commission's proposal is to permit shareholders to communicate to the board of directors their views on each of the matters put to a vote, and not be forced to approve or disapprove a package of items and thus approve matters they might not if presented independently. This approach would eliminate the interpretive uncertainties in determining what matters are properly viewed as related. Since the legal effect of a matter approved by shareholders generally is a question of state law, the proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law.

The Commission also is proposing to amend its definition of "bona fide nominee" in Rule 14a–4,[10] to permit those seeking to nominate persons representing less than a majority of directors to solicit proxies carrying one or more of management's nominees. The current definition results in an opposing shareholder either having to run a full slate of directors or a short slate that serves to partially disenfranchise shareholders who want to vote for the opposition nominees. This amendment is intended to eliminate an unnecessary regulatory obstacle to shareholders successfully nominating and electing minority representation on the board of directors.

Finally, Commission also is proposing several revisions of its disclosure requirements. Item 21 of Schedule 14A is proposed to be amended to codify the required disclosure with respect to abstentions. Forms 10–K and 10–Q [11] are proposed to be amended to require complete disclosure of the results of all shareholder votes. Thus, for example, an issuer will be required to disclose with respect to an election of directors, the votes for and withheld with respect to each nominee.

In addition, the Commission is publishing for public comment a petition for rulemaking filed by Edward V. Regan that would allow shareholders in specified circumstances to require management to include in its proxy statement relating to the election of directors, a statement expressing views on the long-term performance of the company and the effectiveness of management and the board of directors in achieving such long-term growth and shareholder values.

II. Discussion

A. Exemption For Persons Not Seeking Proxy Authority

The initiative to exempt from the proxy rules (other than Rule 14a–9) solicitations by persons not seeking proxy authority was undertaken as a result of the substantial concern raised by public commentary and letters to the Commission and its staff, concerns subsequently confirmed in many of the comment letters filed in response to the proposals, that the current rules unnecessarily curtail communications by shareholders on matters related to the company and its management as well as with respect to matters presented by the registrant or a third party for shareholder action.

Of course, compliance with the proxy rules is necessary only if the communication constitutes a proxy solicitation within the meaning of those rules. However, what communications may be deemed to constitute a solicitation is not always clear. Of particular concern is the broad definition of a proxy solicitation to include not only a request for a proxy or request to execute, not execute or revoke a proxy, but also "the furnishing of * * * a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." [12] The potential that commentary with respect to the company or its management or board of directors, may be deemed after the fact to constitute a solicitation that required compliance with the proxy rules, including the filing and dissemination of a proxy statement, clearly can have, and has been reported to have had, a substantial chilling effect on the communications of shareholders and others on matters relating to the company. As a result, not only may shareholders be dissuaded from commenting on management initiatives

[8] 17 CFR 240.14a–7.

[9] 17 CFR 240.14a–4 (a) and (b)(1).

[10] 17 CFR 240.14a–4(d).

[11] 17 CFR 249.310 and 249.308a.

[12] 17 CFR 240.14a–1(*l*)(1)(iii).

put before shareholders for a vote but shareholders and others who seek simply to comment on the effectiveness of management in achieving long-term corporate performance and shareholder values also will be silenced. Shareholders would be better served by a regulatory process that encourages and facilitates free and open communications.

Today's reproposal of the exemption is intended to refine the June 1991 proposal in light of the public comment on the proposed exemption.

1. Qualifications

No significant changes have been made to the qualifications for use of the proposed exemption. The exemption under proposed Rule 14a–2(b)(1) would be available to those shareholders and others who undertake to discuss matters that are the subject of the company's or a third party's solicitation, but do not solicit proxy authority from shareholders of the company with respect to the same meeting or engage in a consent solicitation and do not have a material economic interest in the subject matter of the solicitation other than as a shareholder or a rank and file employee. As initially proposed, the Rule 14a–2(b)(1) included a note providing examples of persons who would be excluded under those criteria:

a. An affiliate, officer or director of the issuer or an ineligible party;

b. A competing bidder;

c. An interested person of a registered investment company;

d. A person who receives compensation directly or indirectly from any of the above; and

e. A person acting on behalf of a person soliciting proxy authority or who is otherwise ineligible.

The text of the rule has been rewritten to replace the exemplary note of excluded persons with a specified list of ineligible persons. As proposed, the registrant and officers, directors, or affiliates of the registrant or a person conducting a nonexempt solicitation as well as participants in a nonexempt solicitation would be ineligible.[13]

Persons receiving compensation for rendering advice or services related to the solicitation from an ineligible person would be excluded. The exclusion is limited to compensation related to the solicitation, in response to comments that the initial proposal would disqualify anyone receiving compensation from the registrant or a soliciting party for any reason, including broker-dealers and banks that are reimbursed for forwarding material or providing beneficial ownership information. Comment is requested whether such a standard is subject to abuse and whether, as initially proposed, all persons receiving compensation (other than mandatory reimbursement) from an ineligible party should be deemed to be acting on behalf of that party.[14]

Any person soliciting or planning to solicit tenders in connection with a competing tender offer, or who otherwise is proposing an alternative transaction to which it or one of its affiliates is or will be a party, would not qualify.[15] Similarly, any person required to file a Schedule 13D and who has not filed and any person who has filed a Schedule 13D disclosing an intent to, or reserving the right to, engage in a control transaction, including an election contest, could not rely on the exemption.[16]

Where the registrant is an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], an "interested person" of that investment company would not be entitled to the exemption with respect to solicitation of the registered investment company's shareholders.[17] The language has been revised from the original proposal to make clear that the disqualification does not extend to solicitations with respect to portfolio securities, unless the investment company itself is engaging in a non-exempt solicitation.

The final category of ineligible persons would be persons with a substantial interest in the subject matter of the solicitation, other than as a shareholder or rank and file employee.[18] One common objection to the original proposal was the use of the term "disinterested" to describe the type of person entitled to rely on the exemption, particularly since all shareholders presumably have an economic interest in the subject matter of a vote. The term "disinterested" will no longer be used to describe the exemption. Eligibility will turn upon whether the soliciting party has a substantial interest in the matter to be acted upon, a matter currently required to be disclosed under Item 5 of Schedule 14A, and like that item would not include any ownership interest in securities of the issuer where the shareholder will profit or otherwise benefit from shareholder action only in a manner that is proportionately shared by other shareholders.

The solicitation could not be made on behalf of a person who is seeking proxy authority or who is specifically excluded from the exemption or who has a disqualifying substantial interest.[19]

2. Public Notice of Written Solicitations Under Proposed Rule 14a–2(b)(1)

As originally proposed, the exemption would not have required any public notice of the exempt solicitation. Any regulatory requirement creates a potential chilling effect on shareholder communications and consultations, since attention always must be paid to whether the communication rises to the level of a proxy solicitation, requiring compliance with federal document preparation and filing requirements. Nevertheless, to address the concern raised by commenters with respect to nonpublic solicitations, the Commission is proposing that public notice of the solicitation be provided by persons relying on the exemption in certain circumstances. The type of notice required will turn on the nature of the solicitation. Accordingly, solicitations published in newspapers, magazines and other publications (including press releases) or public broadcast would not be subject to additional notice requirements.[20] These solicitations are inherently public and, when such media are used, the risk of a chilling effect arising from uncertainty whether the communication is a proxy solicitation subject to the Commission's rules is wholly unnecessary. The rule provides guidance on the type of publications that provide adequate public notice, drawing upon concepts used under the Investment Advisers Act of 1940.[21]

Other written solicitation material would be required to be submitted to the Commission to be available to the public.[22] The soliciting material would be submitted under the cover of a simple form, proposed Notice Form 14, identifying the soliciting party, and that party's ownership of the securities of the issuer.

The proposed rules would not require a person who is engaged only in an oral solicitation and who is eligible for the proposed exemption to prepare or submit a written document to the

[13] Proposed Rule 14a–2(b)(1)(i), (ii) and (iii).

[14] Proposed Rule 14a–2(b)(1)(vi).

[15] Proposed Rule 14a–2(b)(1)(iv).

[16] Proposed Rule 14a–2(b)(1)(v).

[17] Proposed Rule 14a–2(b)(1)(vii).

[18] Proposed Rule 14a–2(b)(1)(viii).

[19] Proposed Rule 14a–2(b)(1)(ix). A solicitation would not be deemed to be conducted on behalf of an ineligible person merely because a person encourages securityholders to execute a form of proxy disseminated by such ineligible person.

[20] Proposed Rule 14a–6(g)(2).

[21] *See* Section 202(a)(11), 15 U.S.C. 80b–2(a)(11). See also *Lowe* v. *SEC*, 472 U.S. 181, 206 (1985) (exempt publication must be "disinterested" and "offered to the general public on a regular schedule").

[22] Proposed Rule 14a–6(g)(2).

Commission. These persons could not be seeking proxy authorizations or have a disqualifying interest in the company or the subject matter of the solicitation. The Commission has serious reservations about requiring submission of a notice form in such communications. The chilling effect that arises whenever there is a need to discern whether a conversation will be deemed a solicitation is of major concern to the Commission. As noted above, the broad definition of proxy solicitation raises the specter of a shareholder being found after the fact to have violated the proxy rules as a result of a speech commenting on company performance or management's activities, or even a conversation at a dinner attended by more than 10 other shareholders. There can be little shareholder interest served by cutting off such conversations because of the risk of a potential proxy rule violation. It does not appear in shareholders' interests to impose costs on shareholders who do no more than orally communicate opposition to or support for a management or a third party initiative.

Moreover, under the beneficial ownership reporting requirements, shareholders will be provided comprehensive disclosure in those instances where substantial shareholders agree to act together as a group to change or influence control of the company. While the proposed exemption is intended to facilitate free and open communications and consultations among shareholders, it does not excuse shareholders from complying with the reporting requirements pursuant to section 13(d) of the Exchange Act.[23]

The Commission recognizes that some may suggest that the purposes of requiring public notice of exempt written soliciting material would apply as well to exempt oral solicitations and that the burden placed on free and open speech by the ambiguous breadth of the definition of solicitation and the potential chilling effect on discussion concerning the company or its management do not outweigh the need for public notice of some types or all such oral communications. The Commission, therefore, requests comment as to whether it should require a short notice form to be submitted to the Commission for all oral solicitation communications or whether there are particular defined types of oral solicitation that justify a public notice requirement, *e.g.*, a widespread campaign to defeat or support a management or third party initiative.

Copies of the notice and written soliciting material would be submitted or mailed to the Commission and the exchanges on which the security is listed within 10 days of their first use. Defining the submission date in terms of mailing date, parallels the treatment of definitive proxy material. No filing fee would be required. Timely submission of the notice will not be a condition to the exemption. Comment is requested whether the time for mailing the submission to the Commission and the exchange should be extended or reduced.

B. Preliminary Filing and Staff Review of Soliciting Material

The Commission originally proposed to amend Rules 14a–6,[24] 14a–11(e) [25] and 14a–12(b) [26] to allow all soliciting materials, whether disseminated prior or subsequent to the dissemination of the written proxy statement, to be filed only in definitive form at the time of dissemination. The proposals would not have rescinded existing preliminary filing requirements in Rule 14a–6(a) relating to the written proxy statement and form of proxy. That approach is being reproposed in substantially the same form.[27] Materials not subject to a preliminary filing requirement would be filed with, or mailed for filing to, the Commission and sent to the exchanges on the same day they are first published, sent or given to shareholders.

The Commission also is considering, and is seeking comment on the advisability of, exempting from Commission preclearance proxy or information statements and related forms of proxy that are not required to comply with Items 11 (Authorization or Issuance of Securities Otherwise than for Exchange), 12 (Modification or Exchange of Securities), 13 (Financial or other Information), 14 (Mergers, Consolidations, Acquisitions and Similar Matters), 16 (Restatement of Accounts), 18 (Matters Not required to be Submitted), 19 (Amendments to Charter, By-laws or other documents), or 20 (other matters). Under such an approach, for example, proxy statements used in election contests by the company or insurgents would not have to be filed in preliminary form and reviewed by the Commission staff.

Schedules 14B, providing detailed identification and background information concerning persons participating in an election contest, currently are required to be filed in definitive form by all participants in an election contest.[28] In the case of insurgents, a Schedule 14B generally must be filed five business days prior to the commencement of the solicitation. Management participants, on the other hand, generally do not have to file Schedules 14B until five business days after commencement of the solicitation by the registrant. In the June 1991 release, the Commission proposed to eliminate the requirement that a Schedule 14B be filed prior to commencement of a solicitation. Specifically, pursuant to the proposed amendments to Rule 14a–11(c), the Schedule 14Bs would be required to be filed by both management and insurgent participants within five business days following the commencement of a Rule 14a–11 solicitation or the filing of the preliminary proxy statement by each party, whichever is earlier.[29] The Commission further sought comment as to whether the requirement for filing a Schedule 14B should be eliminated, with the disclosure called for by that Schedule to appear in the proxy statement.[30]

The Commission is reproposing the amendments to Rule 14a–11(c) in substantially the same form as initially proposed. Filing the Schedule 14B avoids burdening the proxy statement and other soliciting material with detailed disclosure such as employment history and trading in the issuer's securities extending back a number of years, while still making the information publicly available. The reproposal revises slightly the timing of the filing of a Schedule 14B to focus on the dissemination of the proxy statement, rather than the filing of the preliminary proxy statement. Under the reproposal,

[23] 15 U.S.C. 78n(d).

[24] 17 CFR 240.14a–6.

[25] 17 CFR 240.14a–11(e).

[26] 17 CFR 240.14a–12(b).

[27] Rule 14a–6(a) is proposed to be amended to delete the reference to "other soliciting materials" to be disseminated with the proxy statement to clarify that this material is not subject to the preliminary filing requirement.

[28] Rule 14a–11(c), 17 CFR 240.14a–11(c).

[29] A Schedule 14B presently must be on file with the Commission five business days prior to a solicitation by a person other than the registrant, and must be filed by each participant within five business days of a solicitation by the registrant. *Id.*

[30] Some commenters argued that many participants routinely included 14B information in their proxy statements without particular difficulty, whereas others maintained that such inclusion would clutter unduly the proxy statement and thereby render its contents more confusing to securityholders. If the Schedule 14B were retained, many of the commenters falling in the first group believed that the present disparity between the filing requirements for registrants and third parties should be eliminated. Others were unprepared to comment at all on the proposal, without full knowledge of all the proposals that would be prompted by the Commission's proxy review.

the Schedule 14B would be filed by both management and insurgent participants other than the registrant within five business days following each party's commencement of the solicitation or five business days prior to the dissemination of the definitive proxy statement by that party, whichever is earlier. Thus, the Schedule 14B would not need to be filed unless and until the filing party determined to proceed with the solicitation. The Commission requests comment on the continued need for the information currently required by Schedule 14B. Would it be appropriate simply to eliminate the schedule?

C. Public Access to Preliminary Proxy Materials

The Commission is reproposing amendments to Rule 14a–6(e) to eliminate the current non-public treatment of materials that would be filed in preliminary form. The proposal would conform the treatment of most preliminary proxy statements to that of a preliminary prospectus and Exchange Act periodic reports, and both expedite shareholder access to material information concerning the subject matter of the solicitation and allow for a more meaningful opportunity to respond to the proposed solicitation.

Commenters raised concerns that the inability to file business combinations or acquisitions on a confidential basis would adversely affect the timing of these transactions and thereby their costs, since they could not obtain Commission review of the offering documents while the participants were preparing for public announcement of the transaction. Accordingly, in response to these comments urging a need for optional confidentiality in the case of business combinations, the Commission is proposing to grant automatically, upon request, confidential treatment of preliminary soliciting materials with respect to transactional filings that are subject to Item 14 of Schedule 14A (Mergers, Consolidations, Acquisitions and Similar Matters), where the transaction had not yet been made public.[31] The transaction would not be entitled to confidential treatment if it were a going private transaction subject to Rule 13e–3,[32] or a roll-up transaction as defined in Rule 901(c) of Regulation S–K.[33] Given the affiliated nature of most of these transactions, the need for confidentiality appears significantly less compelling, and the benefits of disclosure concomitantly greater.

A corresponding amendment to Rule 14c–5(d) [34] is proposed to provide for public availability of preliminary information statements and to allow for confidential treatment of those statements under similar circumstances.

Comment is requested on the need for such a procedure for confidential treatment and whether the requirements for granting such request are adequate or unnecessarily onerous. Are there disclosures made pursuant to specified requirements other than Item 14 of Schedule 14A, that also should be afforded confidential treatment upon request?

D. Rule 14a–7

The Commission, after review of the comments on the proposed revision of Rule 14a–7, is modifying its original proposals to narrow those instances in which the registrant would not have the election to mail soliciting materials rather than produce a shareholder list. Under the reproposal, delivery of the list would only be mandated where the registrant had commenced a proxy solicitation subject to the Commission's roll-up rules or going private rule, or such transaction had been disclosed.[35] Based on substantial comment from the corporate community that rights to stockholder lists provided by state law generally provide dissident soliciting shareholders adequate access to the list, and abusive denial of rights to the list were minimal and addressable by the courts, the Commission proposes to continue to allow stockholders to rely principally on their state law rights to obtain the list. Because of the special status under the Commission's rules and investor protection concerns raised by roll-ups and going private transactions, the rule would provide access to the list in those situations. There should be no question of a shareholder's right to a stockholder list for purposes of communicating with other shareholders with respect to such transactions. Comment is requested on the proposed modification of the June 1991 proposal. Is it appropriate to eliminate the registrant's discretion to mail only in the case of roll-up and going private transactions?

Some commenters questioned the Commission's authority to require registrants to provide access to a shareholder list to a shareholder who seeks to oppose a management solicitation. Under Section 14(a) of the Exchange Act, the Commission is authorized to condition the solicitation of proxies upon the soliciting party's compliance with rules and regulations adopted by the Commission as necessary and appropriate in the public interest, a standard applied against the general purposes of the enabling legislation. See *Mourning* v. *Family Publications Services, Inc.*, 411 U.S. 356 (1973); *Touche Ross & Co.* v. *SEC*, 609 F.2d 570 (2d Cir. 1979). While voting rights and the right to vote by proxy generally are determined by state law, federal regulation of the proxy solicitation process serves to make that right meaningful. As the Court of Appeals for the District of Columbia Circuit recently noted in *Roosevelt* v. *Du Pont De Nemours & Co.*, Congress enacted Section 14(a) to "bolster the intelligent exercise of shareholder rights granted by state corporate law." [36] Section 14(a) "shelters use of the proxy solicitation process as a means by which shareholders may become informed about management policies and may communicate with each other." [37] The court in *Roosevelt* determined that the ability "to communicate with other shareholders on matters of major import is a right informational in character, one properly derived from section 14(a) * * *." [38] Both as presently cast and proposed to be revised, Rule 14a–7 similarly is intended to provide eligible shareholders an effective means by which to communicate with other shareholders in the context of a solicitation of proxies by the issuer.[39]

Several of the comment letters cite the *Business Roundtable* decision [40] as holding that the Commission is limited to disclosure matters in promulgating rules under Section 14(a) and assert that mandating delivery of a shareholder list falls within the sphere of corporate governance found to be off limits by the D.C. Circuit. Even though the court stated that "Congress' central concern was with disclosure" in adopting Section 14(a),[41] it also admitted "that

[31] Proposed Rule 14a–6(e)(2).

[32] 17 CFR 240.13e–3.

[33] 17 CFR 229.901(c).

[34] 17 CFR 240.14c–5(d).

[35] Proposed Rule 14a–7(b).

[36] 958 F.2d 416, 418 (D.C. Cir. 1992). See *Medical Comm. for Human Rights* v. *SEC*, 432 F.2d 659 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1971)("[i]t is obvious to the point of banality . . . that Congress intended by its enactment of Section 14 . . . to give true vitality to the concept of corporate democracy." 432 F.2d at 676); see also *J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964) ("[Section 14(a)] stemmed from the congressional belief that 'fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.' H.R. No. 1383, 73d Cong., 2d Sess. 13").

[37] *Roosevelt*, 958 F.2d at 421–22.

[38] *Id.* at 421.

[39] This applies to both an ongoing and intended solicitation.

[40] *The Business Roundtable* v. *SEC*, 905 F.2d 406 (D.C. Cir. 1990).

[41] *Id.* at 410.

disclosure is not necessarily the sole subject of section 14," relying on both Senate and House reports indicating Commission authority to prescribe "the conditions under which proxies may be solicited." The court explained, "Congress acted on the premise that shareholder voting could work, so long as investors secured enough information and, perhaps, the benefit of other procedural protections." [42] Clearly, assuring that a soliciting shareholder has the same ability as management to know to whom to direct their views on a matter that is the subject of a proxy solicitation, is not outside the informational and procedural protections intended by section 14(a).[43]

1. General

The reproposal revises Rule 14a–7 to make clear that either a request for a stockholder list or mailing triggers a registrant's obligation under Rule 14a–7, even where the registrant may elect to mail.[44] The request need not reference Rule 14a–7. Once a request is made, the registrant must promptly advise the stockholder of its election under Rule 14a–7, and if a mailing is elected provide the required information with respect to the number of shareholders and costs of mailing within two business days.[45] Notwithstanding the applicability of Rule 14a–7, the shareholder would also have any rights to access to the list provided under state law or by contract.[46]

Rule 14a–7 would continue to apply only to requests from shareholders entitled to vote on the subject matter of the solicitation or at the meeting; accordingly, beneficial owners who are not entitled to vote under state law on the matter would have to obtain the cooperation of their recordholders. Comment is requested whether beneficial owners, even when not entitled to vote or execute a proxy in their own name, should be entitled to make a request under Rule 14a–7 without the assistance of the recordholder if proper documentation is provided.

2. Registrant's Election to Mail

The reproposal also would clarify that the rule requires the registrant to provide such information for, and undertake mailings to, subsets of shareholders. Thus, for example, a requesting shareholder could request mailing to those shareholders with the largest shareholdings that account for 60% of the outstanding shares eligible to vote.

The registrant will no longer be able to delay mailing the shareholders soliciting materials pursuant to Rule 14a–7 until the earlier of the anniversary date of the mailing of the prior year's proxy statement or the mailing of its own materials, as is currently permitted. The mailing must occur with reasonable promptness after the shareholder has delivered its soliciting materials, along with the necessary packaging and postage.[47]

3. Certification to Obtain Shareholder List

As noted, a requesting shareholder would be required to submit to the registrant, along with its request, a certification by affidavit, declaration, affirmation or other similar document provided for under applicable state law, that the list would not be used for any purposes except to solicit other shareholders with respect to the same subject matter or meeting for which the registrant is soliciting or intends to solicit proxies and that the requestor will treat the information contained in the list as confidential.[48] Certification will not be required where a shareholder requests a mailing, or where the registrant elects to mail.

Any actual use of a list obtained under proposed Rule 14a–7 that is inconsistent with the rule and certification would subject the offending shareholder to a potential Commission enforcement action, including civil injunctive or administrative proceedings and possible fines.

Commenters should address the costs and benefits of the proposed use certification requirement in its entirety, including whether this requirement would serve as an adequate safeguard against list misuse. Specific comment is sought as to whether the certification not only should be provided to the registrant, but also should be filed with the Commission.

Under about 20 state inspection statutes, it is a valid defense to an action for wrongful denial by the requesting shareholder that the latter has sold or misused the list within the previous two to five years from the date of request. Should Rule 14a–7 be amended to include a similar provision to preclude access by shareholders who have been found to have misused a list in the past, for example, five years? Comment further is requested on whether the shareholder should be required to return or destroy the list after a defined period.

4. List of Beneficial Owners and Related Issues

The June 1991 proposal would have revised the requirements with respect to the stockholder list to be provided under the rule to more closely parallel the information available under state law. The list required by current Rule 14a–7 falls far short of the information a shareholder could obtain under the laws and decisions of most states. For example, security holding and beneficial ownership information is commonly required under state law when reasonably available.[49] Improvements to

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[42] 905 F.2d at 410–411.

[43] A number of decisions reflect the "well recognized" principle of conflicts of law that regulation of access to shareholder lists is not a matter subject to the regulation of the internal affairs of the corporation properly left to the control of the chartering state. *Sadler* v. *NCR Corp.*, 928 F.2d 48, 55 (2d Cir. 1991). *See* 17 Fletcher Cyc Corp § 2229, § 8434 (Perm Ed); 19 ALR 3d 869. In *Fleisher Development Corp.* v. *Home Owners Warranty, et al.*, 647 F. Supp. 661, 664 (1986), the D.C. Circuit concluded that "shareholders' or members' rights to inspect corporate books and records do not touch upon the internal affairs of a corporation where such books are within the jurisdiction of the reviewing court." *See also Donna* v. *Abbotts Dairies, Inc.*, 161 A. 2d 13 (1960).

[44] See *In re The Krupp Companies*, Exchange Act Rel. No. 30566 (April 8, 1992). In the *Krupp* order, the Commission also stated that (footnote omitted):

> Where a securityholder is deemed to have requested the list under both state and federal law, the registrant must promptly advise the requesting securityholder as to whether it will mail or provide a list under Rule 14a–7, and must not mislead the securityholder as to whether its rights to a list under state law have been affected by the registrant's actions under Rule 14a–7. Thus, care must be taken not to mislead the securityholder with respect to the comparability of the information to be provided under Rule 14a–7 and state law. Prompt compliance with Rule 14a–7 is required, even if a concurrent request has been presented to the issuer under state law.

[45] Proposed Rule 14a–7(a)(1).

[46] *Id.* This conclusion is amply demonstrated by cases holding that current Rule 14a–7, which grants the registrant the choice whether to deliver a list or mail for the securityholder, does not preempt state law and prevent a state from requiring the registrant to deliver the list upon demand. *First Surety Corp.* v. *Community Bank*, 337 F. Supp. 667, 670 (C.D. Cal. 1971); *Wood, Walker & Co.* v. *Evans*, 300 F. Supp. 171, 173 (D. Colo. 1969), *aff'd* 461 F.2d 852 (10th Cir. 1972).

[47] Proposed Rule 14a–7(a)(2)(i).

[48] Proposed Rule 14a–7(c).

[49] See, *e.g.*, *Sadler* v. *NCR*, 928 F.2d 48 (2d. Cir. 1991) (construing New York law); *Hatleigh Corp.* v. *Lane Bryant*, 428 A.2d 350 (Del. Ch. 1981) (court found that upon showing of a proper purpose, the requesting securityholder was entitled to the same lists and data relating to stockholders as was available to the corporation); *Burlington Industries, Inc.* v. *C.H. Masland & Sons*, No. 88–3295 (E.D. Pa. 1988) (the District Court for the Eastern District of Pennsylvania ordered the registrant to produce, pursuant to the Pennsylvania inspection statute, not only information concerning the beneficial owners of shares held by the central depository systems but also the names and addresses of all beneficial owners that had been identified by the registrant

Continued

the list proposed in June are being reproposed, with one substantive change. Information with respect to beneficial owners will not have to be provided if it is not already in the possession of the registrant at the time of the request and is not otherwise compiled and used by the registrant during the course of its solicitation. In addition, the amended rule would require registrants to provide eligible requesting shareholders with the list information within five business days from the date of request.

A list of nonobjecting beneficial owners (NOBOs) or consenting beneficial owners (COBOs) normally would not include employees of the registrant or its affiliates.[50] Comment is requested whether the rule should be revised to require information concerning employees of the registrant or an affiliate participating in employee benefit plans to be included in the beneficial ownership information provided to the requesting shareholder, regardless of whether the registrant has elected to treat such holdings as exempt employee benefit plan securities.[51] In addition, should shareholders receiving a NOBO/COBO list, as well as the registrant, be permitted to use the list to mail proxy materials directly to beneficial owners, so long as adequate disclosure is provided concerning the need for the recordholder to execute the proxy and proxy materials are sent separately to the recordholder?

A number of commenters expressed opposition to the disclosure of information regarding NOBO and COBO information. Concerns raised by some issuer organizations and other commenters included possible breach of confidentiality of the list, invasion of the beneficial holders' privacy by furnishing to third parties their names, addresses and security position information. A shareholder right of privacy has not been generally recognized by the state courts as a basis for an issuer to resist a proper shareholder list request. Judicial decisions under the laws of Delaware, New York, Nevada and Pennsylvania have specifically recognized a shareholder right of access to the NOBO list.[52]

As noted above, the proposal has been revised to provide that a NOBO/COBO list will be required to be delivered under the revised rule only when it already has been procured by the issuer. Thus, the requestor will not bear any expense of compilation of that list, other than incidental costs in connection with the reproduction and delivery of the list. All other costs incurred in connection with the production of the shareholder list would be borne by the requesting shareholder.[53]

As to the proposed "window period" for issuer list production, the five business-day period reproposed today is consistent with the delivery periods specified in most of the state statutes imposing such a requirement.[54]

As under the current rule, the registrant would be required, at reasonable intervals, to provide requested updated information. However, the proposed rule would not require the registrant to provide the shareholder information more current than holdings as of the record date.[55]

5. Disclosure of Registrant's Denial of Securityholder List Requests

At the suggestion of several commenters, in lieu of eliminating the registrant's option to mail soliciting materials rather than produce the list under Rule 14a–7, as proposed in June 1991, the Commission is proposing to amend the disclosure requirements of Schedule 14A and Schedule 14C to require disclosure of securityholder list requests that have not been satisfied at the time the proxy or information statement is disseminated to securityholders.[56] Those proposing this alternative as a means of preventing abusive denials of shareholder list requests suggest that the proposal will circumscribe management denial of list requests as a tactic to impede proper shareholder communications and will appropriately inform shareholders of management's attempts to preclude shareholder communications.

Under this proposal, the registrant would be required to disclose the name of the requestor, the reasons provided by the requestor for requesting the list, and the registrant's reasons for not complying with the request. To prevent a late list request from delaying the mailing of the registrant's proxy or information statement, only requests received 20 or more business days before the date of the statement need be disclosed in the proxy or information statement. Securityholder lists requests received after that date would be discussed in the next soliciting material provided to securityholders, or if none is disseminated, in the next proxy or information statement disseminated to shareholders by the registrant.

An instruction would provide that disclosure must be provided regardless of whether the list was requested under state, federal or common law or pursuant to contractual provisions. Where the registrant exercises its option under Rule 14a–7 to mail the requesting securityholder's materials in lieu of complying with a list request, that determination must be disclosed. Disclosure would not be required if a court has ruled that the registrant was not under an obligation to produce the list under state law or that the request was not properly made under Rule 14a–7.

Comment is requested on the appropriateness and utility of the proposed disclosure.

E. Announcements by Shareholders of Voting Decisions

The obligation to comply with the proxy rules often will turn on whether the communication falls within the definition of "solicitation" under those rules. *See* Rule 14a–1(*l*), 17 CFR § 240.14a–1(*l*). Questions have arisen whether public announcements by shareholders of how they intend to vote along with an explanation for that vote constitute proxy solicitations. Indeed, some fiduciaries believe it appropriate or necessary to disclose to the public and their beneficiaries how the fiduciary will vote the securities on significant issues.

In order to clarify that such announcements are not proxy solicitations subject to the proxy rules,

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pursuant to Rule 14b–1(c)); *Cenergy Corp.* v. *Bryson Oil and Gas P.L.C.*, 662 F. Supp. 1144 (Nev. 1987) (court ordered production of NOBO list and CEDE breakdowns in possession of the corporation and found that if allowed to shield the names of actual owners from other stockholders, management would have an unfair advantage in the proxy solicitation battle).

[50] See Rule 14a–13(b)(3), 17 CFR 240.14a–13(b)(3).

[51] See Rule 14a–1(d), 17 CFR 240.14a–1(d).

[52] See cases discussed *supra* n. 49. Rejecting an issuer's argument that the NOBO list should be withheld to preserve the beneficial owner's interest in confidentiality, the Delaware Chancery Court reasoned that "by allowing their names to appear on the NOBO list, the beneficial owners apparently decided that they would prefer to receive direct communications from the corporation. It is reasonable to assume that they would want the same type of direct contact on corporate matters from other stockholders." *Shamrock Associates* v. *Texas American Energy Corp.*, 517 A. 2d 658 (Del. Ch. 1986).

To the extent banks and broker-dealers are using forms to obtain a customer's preference with respect to disclosure of beneficial ownership that only seek consent to disclose the identity of the customer to the registrant, regardless of whether any revisions to Rule 14a–7 are adopted, the approach already followed by the state courts to this issue should cause those firms to review their forms to ensure that customers are aware that their names, addresses and holdings could be provided to persons other than the issuer.

[53] Proposed Rule 14a–7(e).

[54] *E.g.*, Del. Code Ann. tit. 8, § 220(c), Mich. Comp. Laws Ann. § 450.1487, Pa. Stat. tit. 15 § 1508. *But see* Md. Corps. & Ass'n Code Ann. § 2–513 (20 calendar day period).

[55] Proposed Rule 14a–7(a)(2)(ii).

[56] Proposed Item 6(f) to Schedule 14A.

the Commission is proposing to amend the definition of solicitation to exclude public announcements by shareholders of how they intend to vote on a particular matter or matters and the shareholder's reasons for that vote. This exclusion from the definition of solicitation would only be applicable if the shareholder was not otherwise soliciting proxies.

F. Proxy Statement Delivery Requirements—Amendments to Rule 14a–12

Rule 14a–3(a) [57] provides that no solicitation may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement. Exemptions to this proxy statement delivery requirement are provided in Rule 14a–11(d) and 14a–12.[58] Rule 14a–11(d) permits the solicitation process in election contests to begin prior to the delivery of a proxy statement, so long as no proxy card is provided, certain background information concerning the participants is disclosed and a proxy statement is provided to shareholders as soon as practicable. There is no restriction on the content of such communications, other than that imposed by the antifraud provisions of Rule 14a–9. Subject to similar requirements, Rule 14a–12 allows for the commencement of a solicitation in non-election contest matters, prior to delivery of a proxy statement to solicited persons, where an opposing solicitation or other publicized activity threatens to frustrate a planned solicitation.

The Commission is proposing to amend Rule 14a–12 to extend the current exceptions to the proxy statement delivery requirements of Rule 14a–3(a) for contested matters to all solicitations, eliminating the exclusion for election contests and the requirement that the solicitation be made in response to an opposing solicitation or other publicized activity that could frustrate a planned solicitation. Rule 14a–11(d) and the filing requirement under Rule 14a–11(e) would be rescinded as no longer necessary in light of the applicability of revised Rule 14a–12 to election contests. The existing requirements of Rule 14a–12 prohibiting delivery of a form of proxy, and mandating disclosure of background information and the delivery of a proxy statement to all persons solicited as soon as practicable will be retained. In addition, as discussed above, soliciting materials disseminated pursuant to revised Rule 14a–12 would not have to be filed in preliminary form and precleared by the Commission staff.

G. Amendment of Proxy Statement Delivery Requirement To Facilitate General Broadcast or Publication of Soliciting Materials

Currently, the proxy delivery rule has been interpreted to require delivery of a proxy statement to all shareholders where a soliciting party publishes soliciting material in a newspaper or broadcasts such material. The publication or broadcast is viewed as a solicitation delivered to all shareholders. This application of the proxy statement delivery rule can, because of the prohibitive costs, foreclose use of public media by those financing a solicitation with their own funds. The effect of the rule may in fact be to curtail widespread dissemination of the dissenting shareholder's views. To address this often prohibitive burden on published or broadcast solicitations, the Commission is proposing to amend the proxy statement delivery requirement to provide that a solicitation by means of a speech, publication in newspapers, magazines and other publications (including press releases) or broadcasts would not in and of itself trigger the proxy statement delivery requirement, so long as a definitive proxy statement relating to the solicitation is on file with the Commission [59] at the time the solicitation is published,[60] broadcast or the speech is made and no form of proxy is provided in connection with the speech, publication or broadcast.[61]

Unlike the proposed modifications to Rule 14a–12 which would apply only where the soliciting party has not delivered a form of proxy to shareholders, the proposed modification of the proxy delivery rule would apply throughout the proxy solicitation period. The modification would simply permit a soliciting party to publish in the press or broadcast a solicitation without automatically triggering a proxy statement delivery requirement to every shareholder—the costs of which could run into the hundreds of thousands of dollars. The modification would not diminish the proxy statement delivery requirement where a form of proxy is provided in connection with the speech, publication or broadcast, or where a solicitation is otherwise communicated. The solicitation would continue to be subject to antifraud prohibitions. Delivery of a form of proxy to a shareholder would still have to be accompanied or preceded by delivery of a proxy statement to such shareholder.

H. Enhanced Disclosure Regarding Voting Results and Vote Tabulation Policies

1. Voting Results

The Commission is proposing additional amendments designed to enhance disclosure regarding the results of a shareholder vote. Currently, Item 4(c) of Form 10–Q [62] and Form 10–K,[63] respectively, require disclosure of voting results only with respect to contested elections and certain other matters, and, in such instances, disclosure is limited to the number of affirmative and negative votes cast. Since the adoption of Item 4(c) 40 years ago,[64] shareholder interest in more particularized information on voting results has increased, particularly with respect to abstentions and withheld votes.[65] Today, a particular voting decision often is intended to send an explicit message to the registrant's board of directors. For example, certain large institutional shareholders have announced recently a policy of withholding votes on an uncontested management slate and publicizing that fact to express dissatisfaction with management's policies or practices.[66] Information regarding withheld votes may be of particular interest in an uncontested election since, in this instance, withholding a vote may be one of the few means of expressing disagreement

[57] 17 CFR 240.14a–3(a).

[58] 17 CFR 240.14d–11(d) and 17 CFR 240.14a–12.

[59] Proposed Rule 14a–3(f).

[60] Such publication, broadcast or speech could be made without the proxy statement on file pursuant to proposed Rule 14a–12. The Schedule 14B filing requirements under the proposed revisions to Rule 14a–11(c) would also be triggered in an election contest by a solicitation pursuant to proposed Rule 14a–3(f).

[61] Thus, for example, publication of a form of proxy would preclude reliance on the exception as would a broadcast that instructed listeners on how to provide a proxy by telephone, Telex, datagram or other similar means.

[62] 17 CFR 249.308a.

[63] 17 CFR 249.310.

[64] Exchange Act Release No. 4686 (March 17, 1952), originally adopted as Item 14 to Form 8–K, transferred to Form 10–Q in Exchange Act Release No. 13156 (January 13, 1977), and incorporated into Form 10–K in Exchange Act Release No. 18524 (March 3, 1982).

[65] See generally Heard, *Institutional Investors: Active Institutions Sharpen Their Focus for 1992, Insights* at 18 (December 1991); Reed, *The Tabulation of Abstentions in Proxy Voting, Insights* 14 (December 1991); J. Grundfest, "Just Vote No or Just Don't Vote," Presentation before the Fall Meeting of the Council of Institutional Investors (Washington, D.C., November 7, 1990).

[66] See Wharton, *Just Vote No*, Harv. Bus. Rev. 139 (November-December 1991)(Chairman and CEO of America's largest institutional investor, TIAA-CREF, announced adoption of such a policy). CalPERS also has employed this policy (*see* Heard, *Institutional Investors: Active Institutions Sharpen Their Focus for 1992, Insights* at 18 (December 1991)), as has the California State Controller (see *Director's Monthly* at 11 (March 1992)).

with management. Many corporations themselves have recommended this tactic as an effective means of communicating shareholder concerns to the board.

To provide shareholders with more complete disclosure regarding voting results, Item 4(c) of Forms 10–Q and 10–K would be amended to require disclosure of the number of votes cast for, against or withheld (elections), or as abstentions, as well as non-votes, as to each matter presented for a shareholder vote, including both contested and uncontested elections of directors. The information would have to be provided with respect to each nominee. A specific explanation would be required of how votes falling within each category have been tabulated by the registrant. The item also clarifies that disclosure of the outcome of the vote must be reported in the periodic report covering the period during which the vote was taken. This will facilitate locating such information.

2. Vote Tabulation Policies and Procedures

Given the diverse state law approaches to proxy tabulation, particularly with respect to abstentions and broker non-votes,[67] the Commission also proposes to amend Item 21 of Schedule 14A to clarify the disclosure required of the manner in which proxy votes will be counted, including the treatment and effect of abstentions and non-votes both under state law and registrant charter/by-law provisions.[68] This amendment codifies current Commission interpretation under Item 21. The revised item, however, would be extended to the election of directors, unlike the current requirement. Such disclosure is intended to inform shareholders of the consequences of voting in a particular manner under state law, including where true that an abstention or non-vote could have the same effect as a "no vote" in the tabulation of the proxies.[69] The disclosure of the effect of an abstention or a non-vote must be clearly and concisely set forth, and not obscured by obtuse legalistic boilerplate.

I. Presentation of Matters on the Form of Proxy

Rule 14a–4(a) provides that the form of proxy shall identify each matter or "group of related matters" intended to be acted upon. Rule 14a–4(b)(1) requires that the form of proxy provide an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or "group of related matters." Where a registrant or other party expressly conditions the adoption of one matter on the approval of other matters, the matters have not been required to be separately set forth on the form of proxy. Such an approach has been viewed as causing shareholders to approve matters they might not if presented independently.

To address the disclosure concerns presented by the practice of bundling related matters, the Commission is proposing to amend Rule 14a–4(a) and 14a–4(b)(1) to require the form of proxy to set out each matter in a group of related matters separately on the form of proxy to allow for a separate vote on each matter.[70] The proposal is intended to permit shareholders to act on each matter to be approved. It furthers the purposes underlying Rule 14a–4(b)(1), to allow shareholders to vote for, against or abstain on each matter presented, and not have the soliciting party determine the shareholder's choices. Since the legal effect of a matter approved by shareholders generally is a question of state law, the proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law. In such case, appropriate disclosure would be required to advise shareholders that a vote against one proposal could have the effect of a vote against the group of mutually conditioned proposals.

J. Bona Fide Nominees—Proposed Amendment to Rule 14a–4

The difficulty experienced by shareholders in gaining a voice in determining the composition of the board of directors has been highlighted by a number of comment letters and proposals, as well as congressional proposals for expanded shareholder access to management proxy statements for the purpose of nominating director candidates. These proposals are based on the perception that currently the board of directors is picked by management and therefore does not allow for truly independent representation of shareholder interests. One answer to complaints about the asserted closed nomination process has been that shareholders are always free to nominate and solicit proxies in favor of their own candidates.

Some have contended that obtaining minority representation on the board allows for a form of "constructive engagement" without necessitating a change of control of the corporation.[71] The proxy rules, it has been asserted, are a principal impediment to shareholders seeking such minority representation. A party seeking to nominate less than a majority of a board where the entire board is up for election and solicits proxies to vote for such nominees is, in effect, running a "short slate." However, shareholders may be unwilling to execute a proxy that does not contain authority to vote for all seats up for election, absent cumulative voting, since the shareholder would not be exercising its full voting power. State law generally provides that a later-dated proxy revokes all prior proxies, at least with respect the same subject matter. Therefore, under state law a shareholder can be prevented from executing both insurgent and management proxies to vote for that mix of board nominees it wishes to serve.[72]

[67] In two instances, a shareholder will be deemed present at the meeting for quorum purposes, but will be deemed not to have voted on a particular matter. First, the shareholder may specifically abstain from the vote by registering an abstention vote. Second, a nominee holding shares for beneficial owners may have voted on certain matters at the meeting pursuant to discretionary authority or instructions from the beneficial owners, but with respect to other matters may not have received instructions from the beneficial owner and may not exercise discretionary voting power. Such unvoted shares are termed "non-votes."

[68] In some states, corporations can alter the state law approach to proxy tabulation by certificate of incorporation or by-law amendment. A recent survey by the Investor Responsibility Research Center indicates that companies vary widely in their treatment of abstentions and broker non-votes when calculating the percentage of the vote that shareholder proposals receive. See Reed, *The Tabulation of Abstentions in Proxy Voting*, Insights (December 1991) at 16.

[69] For example, in states adopting Section 7.25 of the Revised Model Business Corporation Act, there is a statutory presumption that a proposal passes if it receives a majority of votes cast for or against a proposal, so long as a quorum is present at the meeting. See, *e.g.*, Florida (Fla. Stat. Ann. § 607.0727) and New York (N.Y. Bus. Corp. Law § 614). Under this approach, abstentions and non-votes have no effect on the vote. Other states require that a majority of the quorum vote in favor of a proposal for it to pass. See, *e.g.*, Ala. Code § 10–2A–52. Under this approach, abstentions and non-votes have the effect of a vote against a proposal. Delaware has adopted a hybrid of these approaches pursuant to which abstentions are treated as votes against a proposal and non-votes have no effect on the vote. See Del. Code Ann. tit. 8, § 216; *Berlin* v. *Emerald Partners*, 552 A.2d 482 (Del. 1988).

[70] In addition to providing separate boxes, the form of proxy could afford shareholders an opportunity to mark a single box for, against, or abstain with respect to a specified group of proposals.

[71] See, *e.g.*, Gilson & Kraakman, Reinventing the Outside Director: An Agenda for Institutional Investors, 43 Stan. L. Rev. 401 (1991).

[72] See *Concord Financial* v. *Tri-State Motor Transit Co. of Delaware*, 567 A.2d 1, 8 (Del. Ch. 1989). A well developed body of law examining this area holds that in determining the validity of proxies, inspectors of an election must reject all identical but conflicting proxies when the conflict cannot be resolved from the face of the proxies

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To solve this problem, a soliciting shareholder may wish to round out its slate by including the names of persons nominated on management's slate. Here, the Commission's proxy rules erect the unnecessary impediments. Rule 14a–4(d) prohibits the listing on a form of proxy of the names of persons who are not "bona fide nominees," that is, persons who have consented to be named in the proxy statement of the soliciting party and to serve if elected.[73] Rarely, if ever, do management nominees consent to be named by insurgents. That rule has the effect of depriving shareholders of the opportunity to vote for one or more management nominees on an insurgent's card in a short slate situation, since those persons have not consented to be named in the insurgent's proxy statement. Therefore, while a dissident may desire only to have minority representation on the board of directors, the present legal framework makes this extremely difficult and, in fact, encourages an all-or-none approach to election contests.

The Commission is proposing to address this problem by amending the bona fide nominee rule to permit a person soliciting proxies to vote for a minority of the board consisting of non-management nominees to provide shareholders an opportunity to vote for certain or all of management's nominees. This change will permit insurgents to choose management nominees to round out their slates in seeking minority representation. The form of proxy provided by a dissident would be required to list separately management nominees. Where, however, an insurgent seeks to vote proxies for a majority of the board consisting of non-management directors, and thereby obtain control of the board, the requirement for specific nominee consent to be named and serve will continue. For those insurgents seeking control of the board of directors, it does not appear unduly burdensome that they should have to propose a full slate of nominees or bear the obligation to disclose the consequences to shareholders of using the proxy to vote for a short slate.[74]

The proposed amendment to Rule 14a–4(d) would continue to address the apparent underlying concerns of the bona fide nominee rule—that shareholders not be induced to vote for an unnamed nominee or waste their votes on persons, such as a public figure, who may be named by a dissident slate, but who has not consented to serve and would not serve. Furthermore, a management nominee who would not serve if dissidents were elected to the board, even if the latter were to occupy a minority position, could disclose that intention to shareholders. Thereafter, shareholders could assess this information before making a decision whether to vote for that nominee.

III. Shareholder Analysis of Management Performance

The Commission is publishing for public comment a proposal that is the subject of a petition for rulemaking submitted by Edward V. Regan, Comptroller of the State of New York.[75] The proposal would allow shareholders in specified circumstances to require management to include in its annual proxy statement relating to the election of directors, a statement expressing views on the performance of the company, its management and the board of directors.[76] The procedure would apply to information statements under Section 14(c) of the Exchange Act as well.[77] In publishing the proposal for comment, the Commission has made several revisions in the eligibility and procedural provisions that it believes necessary for public consideration.

Under the proposal, any person or group of persons who has held one-half of a percent or more of the voting power of the stock of the corporation for three or more years would be eligible to submit a statement to be included in the company's proxy statement relating to the election of directors, setting forth their views on long-term company performance and the effectiveness of management in promoting the long-term interests of the corporation and its shareholders.[78] The statement could be submitted by a group of shareholders, so long as each member has held the securities for the requisite three years. There would be no limit on the number of shareholders that could constitute a group for the purpose of meeting the one-half percent ownership requirement. Solicitations of shareholders to support the statement would not be subject to the proxy rules (other than Rule 14a–9). Written material seeking sponsorship would be submitted to the Commission under the cover of a Notice Form 14.[79] Shareholders would not be deemed a section 13(d) group merely on the basis of their sponsorship of the statement.

Under the proposal, the statement would be limited to 700 words, not counting any tables, charts or graphs.[80] There would be no limit on management's response to a submitted statement. The statement would be submitted 120 days prior to the anniversary of the mailing of the registrant's most recent proxy statement relating to an annual meeting.[81] Only three statements received by that date would need to be included; if more than three were submitted, three would be chosen by lot after removing any statements by persons who have had statements included in the last three years.[82] The procedure would not be available in election contests involving two or more opposition nominees.[83]

Comment is requested on the proposal and the appropriateness or necessity for providing access to the company proxy statement for such statements. In view of the size of the investment that would be required under the proposed ½ of 1% standard,[84] comment is specifically

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themselves or from the regular books and records of the corporation.

Williams v. *Sterling Oil of Oklahoma, Inc.*, 273 A.2d 264, 265 (Del. 1971) quoted in *Parshalle* v. *Roy*, 567 A.2d 19, 23–24 (Del. Ch. 1989). *See also* Cornwell, Palenchar, Segal & Stevens, "Splitting Votes in Proxy Contests," 25 *Securities & Commodities Regulation* 89 (April 1992); "Corporations: Power of Inspectors of Election Relating to Irregular or Conflicting Proxies," 44 ALR 3d (1943).

Attempts to reconcile multiple proxies in order to "mix and match" slates by providing for "partial revocations" of earlier proxies have proven cumbersome and confusing. *See* Proxy Statement filed by NYCOR, Inc. with respect to Zenith Corp., dated March 11, 1991. The validity of such an approach is generally a question of state law.

[73] Rule 14a–4(d)(4), 17 CFR 240.14a–4(d)(4).

[74] The required disclosure includes whether the remaining seats are likely to be vacant or filled by management nominees (often depending on whether the vote requirement for the election of directors is a plurality or majority of votes cast) and that certain management nominees may not serve if elected to an insurgent-controlled board. In addition, any plan to fill any such vacancies on the board must be disclosed.

[75] Copies of the proposal, submitted under a cover letter from Mr. Regan to Chairman Breeden, dated March 18, 1992, are available for inspection and copying in the Commission's Public Reference Room [(202) 272–7450; File No. S7–22–91].

[76] Proposed Rule 14a–X(a).

[77] 15 U.S.C. 78m (c). *See* Proposed Item 5 to Schedule 14C.

[78] Proposed Rule 14a–X(b). Determinations by the registrant to exclude a statement would be subject to judicial review in an action by the sponsor or in a Commission enforcement action. *See Roosevelt* v. *Du Pont De Nemours & Co.*, 958 F.2d at 418.

[79] Proposed Rule 14a–X(i). The party soliciting support, however, need not meet the eligibility requirements of proposed exemptive Rule 14a–2(b)(1).

[80] Proposed Rule 14a–X(f)(1).

[81] If the proxy statement relates to a special meeting or a consent solicitation for the election of directors, the proposal would require submission of the statement a reasonable time before the solicitation.

[82] Proposed Rule 14a–X(g)(2).

[83] Proposed Rule 14a–X(g)(1).

[84] This standard would require an investment of $376.5 million in Exxon Corporation, $320 million in General Electric, $259 million in IBM, $107.2 million in Ford Motor Company, $12.7 million in CBS, Inc.

sought on the appropriateness of the size requirement for shareholdings. If the proposal were implemented by the Commission, should the requisite holding be lowered, or should there be an alternative dollar threshold, for example $10 million or $100 million? Should the required holding period be changed to one, two or five years?

IV. Request for Comments

Any interested person wishing to submit written comments on the proposed revisions to the Commission's proxy rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[85]

V. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, 14a–12, 14c–5, Schedules 14A and 14C and Forms 10–K and 10–Q under the Exchange Act, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the filing and disclosure requirements for proxy soliciting materials and information statements. The proposed exemption for communications with shareholders, the modification of the proxy statement delivery requirements and the elimination of requirements to file proxy soliciting materials in preliminary form in specified circumstances, and the facilitation of short slates should reduce costs significantly for persons who meet the requirements of the amendments. While the Rule 14a–7 requirement to deliver a shareholder list in the case of transactions subject to commission roll-up or going private rules and the enhanced disclosure requirements will impose new minimal costs, those costs should be justified by the benefit of informed decisionmaking by shareholders. The Commission also requests that commenters provide views and data concerning the costs and benefits of amending Rule 14a–7 and the disclosure requirements in Forms 10–K and 10–Q, as well as Schedules 14A and 14C and Notice Form 14.

Comments also are requested on the effects of all the proposals on the costs to be incurred by small entities.

VI. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed amendments to provisions of Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, and 14a–12, as well as Schedules 14A and 14C and Forms 10–K and 10–Q. The analysis has been prepared by the Commission in accordance with The Regulatory Flexibility Act.[86]

1. Reasons For and Objectives of the Proposed Action

A proposed amendment to Rule 14a–2(b) would create an exemption for communications with shareholders from the proxy statement filing and delivery requirements of the proxy rules, where the person soliciting is not seeking proxy authority and does not have a substantial interest in the matter subject to a vote and is not acting on behalf of a nonexempt person.[87] No proxy statement will be required to be filed and disseminated; however, public notice of the soliciting activity will be required through publication or the submission of soliciting materials, accompanied by a notice with the Commission containing the information specified in Notice Form 14. The objective of this amendment is to eliminate unnecessary impediments to routine communications and consultations by shareholders with respect to matters presented by the registrant or a third party for shareholder action.

Proposed amendments to Rules 14a–6, 14a–11 and 14a–12 would allow solicitation materials other than the proxy statement and form of proxy, whether disseminated prior to or subsequent to the dissemination of the written proxy statement, to be filed with the Commission in definitive form at the time of dissemination,[88] and to make the preliminary proxy statement available for public inspection when filed except under specified circumstances when confidential treatment is requested.[89] The purpose of these proposed amendments is to reduce the costs and other burdens incurred by persons engaged in non-exempt solicitations, subject to the Rule 14a–9 proscriptions against false and misleading statements. The proposed amendments also are intended to reduce administrative costs incurred by the Commission in processing this material.

A proposed amendment to Rule 14a–7 would require registrants, in the case of transactions subject to the Commission roll-up or going private rules, to provide shareholders, upon written request and satisfaction of certain conditions, copies of its list of shareholder names, addresses and position listings, as well as any list of non-objecting or consenting beneficial owners where in the possession of the registrant.[90] The purpose of this amendment is to facilitate dissemination of material information to shareholders in those situations where there is a well-recognized risk of overreaching of nonaffiliated shareholders. Registrants would be required to disclose if they have denied access to a list, as a means to alert shareholders to possible abusive denials.

A proposed amendment to Rules 14a–11 and 14a–12 and Rule 14a–3 would expand the class of solicitations that can commence prior to the dissemination of the proxy statement [91] and exempt opinions and views conveyed by publication, broadcast or a speech from the proxy statement delivery requirements.[92] These proposals are intended to significantly lower the costs and expedite soliciting efforts by shareholders and registrants alike.

A proposed amendment would enhance disclosure regarding voting results currently contained in Forms 10–K and 10–Q and vote tabulation policies currently disclosed under Item 21 of Schedule 14A.[93] The purpose of this amendment is to alert shareholders to material facts with respect to the results of a shareholder vote and the effect of proxies voted as abstentions, withheld votes, and non-votes.

A proposed amendment to Rule 14a–4(a) and (b)(1) would require that the form of proxy set forth each matter to be voted upon separately to allow shareholders to vote individually on each matter. The purpose of this proposal is to further shareholder understanding of the effect of a proxy vote with respect to a group of related matters and to allow shareholders to express their preference on each matter.

A proposed amendment to Rule 14a–4(d) would allow dissenting shareholders seeking minority

[85] 15 U.S.C. § 78w(a).

[86] 5 U.S.C. §§ 601 *et seq.*

[87] *See* Section II.A., *supra.*

[88] *See* Section II.B., *supra.*

[89] *See* Section II.C., *supra.*

[90] *See* Section II.D., *supra.*

[91] *See* Section II.F., *supra.*

[92] *See* Section II.G., *supra.*

[93] *See* Section II.H. *supra.*

representation on the board of directors to include names of management nominees on their form of proxy. The purpose of this amendment is to facilitate efforts by shareholders to obtain minority representation on the board of directors.[94]

A proposed amendment to require registrants to include the statement of significant, long-term shareholders on specified subjects in the proxy statement disseminated by the registrant in connection with annual meetings for the election of directors. The purpose of the amendment is to provide better disclosure to shareholders concerning the long-term performance of the company, its management and board of directors.

2. Legal Basis

The amendments are being proposed pursuant to sections 3(b), 13(a),[95] 14,[96] and 23(a) [97] of the Exchange Act.

3. Small Entities Subject to the Rule

The Commission has adopted definitions of the term "small entity" for the various entities subject to Commission rulemaking. Only two of these definitions are relevant for purposes of the proposed amendment. Rule 0–10 [98] under the Exchange Act provides that "small businesses" include an issuer, other than an investment company, that has total assets of $5 million or less as of the end of its most recent fiscal year. As of June 1992, approximately 900 of these entities are registrants subject to the proxy rules. The proposed amendments to the shareholder list requirements and the amended disclosure requirements should not impose any significant new costs on registrants. In addition, proposals to lower the costs of compliance with the proxy rules by persons engaging in non-exempt solicitations, should result in a significant net decrease in regulatory costs.

Since any person who solicits proxies with respect to a registrant's securities also is subject to the proxy rules, a number of persons that are small entities are subject to the rules on this basis. The proposed amendments should result in significant savings from the costs incurred under the current rules for soliciting activities by small entities. Many solicitations by persons other than the registrant will be excepted from all the proxy rules other than the antifraud provisions and will be only required to submit to the Commission all written material used in the solicitation and a Notice Form 14, disclosing an intent to rely on the exception. These persons would not have to prepare, file and disseminate a proxy statement meeting the requirements of Schedule 14A. Other proposed amendments would allow solicitations by any party to commence without requiring the party to concurrently deliver a proxy statement or deliver a proxy statement to all shareholders.

Other parties who are subject to the proxy rules include investment companies. An investment company is a "small business" if it has net assets of $50 million or less as of the end of its most recent fiscal year.[99] By this definition, "small business" investment companies will be subject to the proposed amendments. However, many classes of "plain vanilla" proxy statements may now be filed in definitive form. Therefore, it is believed that few small business investment companies would be directly affected by this rule. For those involved, however, it is believed that the economic burden would be decreased. As with other registrants, these entities should benefit from the relaxation of the proxy statement requirements and the shareholder list and statement requirements should not impose new significant costs.

4. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, 14a–12, and 14c–5, Schedule 14A and 14C and Forms 10–K and 10–Q would not result in any significant increase in reporting, recordkeeping or compliance requirements. Proposed amendments to exempt solicitations from the proxy statement delivery requirements, to reduce or eliminate the preliminary filing requirements, and to eliminate non-public filing of all proxy soliciting materials, would result in a net diminution of reporting and other compliance requirements for all entities that qualify for the exclusions.

5. Overlapping or Conflicting Federal Rules

The proposed amendment would not overlap or conflict with any existing federal rule provisions.

6. Significant Alternatives

Significant alternatives to the proposed amendments to Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, and 14a–12 could include amending the definition of solicitation to exclude a broad class of communications from all provisions of the proxy rules. This approach, however, would result in the antifraud provisions of the proxy rules no longer being applicable to statements that are made with the purpose of influencing shareholder voting. The Commission could also increase the classes of proxy statements that may be filed in definitive form. While the Commission is requesting further comment on this alternative, it has determined to maintain the current preliminary filing requirements, although the public will be granted access to those materials in most instances when they are filed. In addition, as the Commission had previously proposed, persons eligible to use the communication exception for written solicitations could be excepted from all filing requirements. However, many commenters suggested in response to the initial proposal, that absent public notice of these soliciting activities, the registrant, other shareholders and the market could be deprived of material information.

Alternatives to the proposed amendment to the proposed bona fide nominee rule and the required statements on management performance could include greater shareholder access to the registrant's proxy statement, including with respect to nominations and election of directors. Those alternatives would likely impose more significant costs on registrants.

Therefore, the Commission believes that there is no less restrictive alternative to the proposed rule amendments that would serve the purposes of the securities laws. However, the Commission will receive comments on each of the above-mentioned proposals prior to final rulemaking.

7. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7–15–92. All comments received will be available for public inspection and copying in the Commission's Public

[94] *See* section II.J., *supra.*
[95] 15 U.S.C. 78m(a).
[96] 15 U.S.C. 78n.
[97] 15 U.S.C. 78w(a).
[98] 17 CFR 240.0–10.
[99] 17 CFR 170.0–10.

Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

VII. Statutory Basis

The amendments to the proxy rules are being proposed by the Commission pursuant to sections 3(b), 13, 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

VIII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By amending § 240.14a–1 (Rule 14a–1(l) to revise paragraph (l)(2) thereof to read as follows:

§ 240.14a–1 Definitions.

* * * * *

(l) *Solicitation.* * * *

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a–7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; and

(iv) The public announcement by a security holder not otherwise soliciting a proxy that does no more than state how that security holder intends to vote and the reasons therefor.

3. By amending § 240.14a–2 to revise the introductory text of paragraph (b); to redesignate paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively; and to add new paragraph (b)(1) to read as follows:

§ 240.14a–2 Solicitations to which §§ 240.14a–3 to 240.14a–14 apply.

* * * * *

(b) Sections 240.14a–3 to 240.14a–6 (other than 14a–6(g) as pertinent), 240.14a–8, and 240.14a–10 to 14a–14 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, and does not act on behalf of a person who furnishes or requests, a consent or authorization for delivery to the registrant. *Provided, however,* that the exemption set forth in this paragraph shall not apply to:

(i) The registrant, an officer, director, affiliate, or associate of the registrant, or any person serving in a similar capacity;

(ii) An affiliate of a person ineligible to rely on the exemption set forth in this paragraph, and any officer, director or associate of such ineligible person, or any person serving in a similar capacity;

(iii) Any nominee for whose election as a director proxies are solicited;

(iv) Any person soliciting in opposition to a tender offer, merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(v) Any person who is required to report beneficial ownership of the registrant's equity securities on Schedule 13D [§ 240.13d–101], unless such person has filed a Schedule 13D and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right to, engage in a control transaction, including a contested solicitation for the election of directors;

(vi) Any person who receives compensation from an ineligible person directly or indirectly related to the solicitation of proxies;

(vii) Where the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), an "interested person" of that investment company, as that term is defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2);

(viii) Any person who, because of a substantial interest in the subject matter of the solicitation, will receive a benefit from a successful solicitation that is not shared pro rata by all other holders of the same class of securities; and

(ix) Any person acting on behalf of any of the foregoing.

* * * * *

4. By amending § 240.14a–3 to add a new paragraph (f) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(f) The provisions of paragraph (a) of this section shall not apply to a solicitation made solely by means of a speech in a public forum, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, newspaper, magazine and/or business or financial publication of general and regular circulation, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to security holders in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the Commission pursuant to § 240.14a–6(b).

5. By amending § 240.14a–4 to revise the first sentence of each of paragraphs (a)(3) and (b)(1) and to add a new concluding sentence at the end of paragraph (d) to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(a) * * *

(3) Shall identify clearly and impartially each matter intended to be acted upon, whether or not related or mutually conditioned on the approval of the other matters, and whether proposed by the registrant or by security holders.

* * *

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter referred to therein as intended to be acted upon, other than elections to office. * * *

(d) * * *

Provided, however, that nothing in this paragraph shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from providing security holders an opportunity to vote for all or certain of the nominees named in the registrant's proxy statement, so long as the registrant's nominees are clearly distinguished on the form of proxy from nominees who have consented to be named in the proxy statement filed in connection with such opposing solicitation.

* * * * *

6. By amending § 240.14a–6 to revise the first sentence of the introductory text of paragraph (a); to remove paragraphs (b) and (h); to redesignate paragraphs (c) through (g) as paragraphs (b) through (f); to add new paragraph (g); to redesignate paragraphs (i) through (m) as paragraphs (h) through (l); to revise the caption to newly redesignated

paragraph (b); to revise newly redesignated paragraphs (c), (d), and (e); and to add to newly redesignated paragraph (i) a new subparagraph (5), to read as follows:

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. * * *

(b) *Definitive proxy statement and other soliciting materials.* * * *

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) *Public availability of information.* All copies of preliminary material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101) that is nonpublic and is not required to be publicly disclosed under any other provision of law, then all copies of preliminary proxy statement and form of proxy filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) The solicitation does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K [§ 229.901(c) of this chapter];

(ii) At the time of filing, a separate copy of the materials is sent to the Secretary of the Commission together with a written request for confidential treatment; and

(iii) The filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

(g) *Solicitations subject to § 240.14a–2(b)(1).*

(1) Any person relying upon the exemption set forth in § 240.14a–2(b)(1), shall furnish or mail to the Commission, within 10 days of the commencement of such solicitation, five copies of a statement containing the information specified in Notice Form 14 [§ 240.14a–103] which statement shall attach as an exhibit any written soliciting materials. Five copies of an amendment to such statement shall be submitted, or mailed to the Commission, in connection with the dissemination of any additional soliciting materials within 10 days following the date such materials are first sent or given to securityholders.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to solicitations consisting solely of oral communications, speeches in a public forum, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, newspaper, magazine or business or financial publication of general and regular circulation.

(i) *Fees.* * * *

(5) For submissions made pursuant to §§ 240.14a–2(b)(1) and 240.14a–6(g), no fee shall be required.

* * * * *

7. By revising § 240.14a–7 to read as follows:

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any security holder entitled to vote at the meeting or to execute a consent or authorization, to provide a list of security holders or to mail the requesting security holder's materials, the registrant shall:

(1) Mail or otherwise furnish to the requesting security holder within two business days after receipt of the request:

(i) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder;

(ii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the registrant has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(iii) If applicable, notify the security holder of the registrant's election under paragraph (b) of this section; and

(iv) With respect to security holders requesting the security holder list, a statement indicating whether the registrant has obtained a reasonably current list of beneficial owners pursuant to § 240.14a–13(b) and the date of such a list.

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities to enable them to distribute a copy to each beneficial owner to receive one pursuant to the security holder's instructions. The registrant shall mail the security holder material with reasonable promptness

after tender of the material to be mailed, envelopes or other containers therefor, and postage or payment for postage. The registrant shall not be responsible for the content of the material; or

(ii) Furnish the requesting security holder with the following information within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder; a reasonably current list of beneficial owners as specified in § 240.14a–13(b), if such a list is in the possession of the registrant at the time of the security holder's request; and any other information relating to the names, addresses, and security positions of beneficial owners that is in the registrant's possession and that the registrant has used or intends to use to conduct its solicitation in connection with the meeting or action. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or at other reasonable intervals, *Provided, however,* the registrant need not provide information more current than the record date for the meeting or action.

(b) If the registrant is soliciting with respect to a proposal that is subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), the requesting security holder shall have the option set forth in paragraph (a)(2) of this section. With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in paragraph (a)(2) of this section.

(c) At the time of a list request, the security holder making the request or the beneficial owner for whom the request is made shall provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal that will be the subject of the security holder's solicitation or communication and attesting that:

(1) The security holder will not use the list information for any purpose other than to communicate with or solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit; and

(2) The security holder will not disclose such information to any person other than the beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to communicate with or solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation.

(e) The security holder shall defray the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

8. By amending § 240.14a–11 to remove paragraph (c)(2) and redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5), respectively; to revise paragraph (c)(1); in newly redesignated paragraph (c)(3), to remove the reference to "paragraphs (c) (1), (2) and (3)" and in its place add "paragraphs (c)(1) and (c)(2)"; to remove paragraphs (d) and (e) to redesignate paragraphs (f) through (h) as paragraphs (d) through (f), respectively; to remove the last sentence in newly redesignated paragraph (d); and to revise newly redesignated paragraph (e) to read as follows:

§ 240.14a–11 Special provisions applicable to election contests.

* * * * *

(c) *Filing of Information Required by Schedule 14B.* (1) No later than five business days following the commencement of a solicitation subject to this section or five business days prior to the filing or mailing for filing of a definitive proxy statement pursuant to § 240.14a–6(b) relating to such a solicitation, whichever is earlier, three copies of a statement containing the information specified by Schedule 14B (§ 240.14a–102) shall be filed with the Commission and with each national securities exchange upon which any security of the registrant is listed and registered, by and on behalf of each participant in such solicitation, other than the registrant.

* * * * *

(e) *Application of § 240.14a–6.* The provisions of paragraphs (b), (c), (d), and (e) of § 240.14a–6 shall apply, to the extent pertinent, to soliciting material subject to paragraphs (d) of this section.

* * * * *

9. By revising § 240.14a–12 to read as follows:

§ 240.14a–12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of § 240.14a–3(a), a solicitation may be made prior to furnishing security holders a written proxy statement meeting the requirements of § 240.14a–3(a) if:

(1) No form of proxy is furnished to security holders prior to the time the written proxy statement is furnished to security holders: *Provided, however,* That this paragraph (a)(1) shall not apply where a written proxy statement then meeting the requirements of § 240.14a–3(a) has been furnished to security holders by or on behalf of the person making the solicitation;

(2) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests direct and indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation; and

(3) A written proxy statement meeting the requirements of this regulation is sent or given to the security holders at the earliest practicable date.

(b) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of a written proxy statement required by § 240.14a–3(a) shall be filed or mailed for filing with the Commission not later than the date copies of such material are first sent or given to security holders.

10. By amending § 240.14a–101 to add a new paragraph (f) to Item 6 of Schedule 14A, to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 6. Voting Securities and Principal Holders Thereof

* * *

(f) If the registrant has received a request for a security holder list on or before the twentieth calendar day preceding the date of the proxy statement, or later than 20 calendar days prior to the date of the registrant's most recent proxy statement, and the requested list had not been provided by the date of the proxy statement, state the name of the requestor, the reasons given, if any, for requesting the list, and

the registrant's reasons for not providing the list. The information required by this paragraph shall be provided in any additional soliciting material provided to security holders following the dissemination of a proxy statement not containing such information.

Instruction: The discussion of requests for a security holder list called for by this item must be provided whether the request was made under federal, state, or common law or contractual provisions. Where a request for a list has been made under Rule 14a–7 and the registrant elects to mail the security holders materials in lieu of providing a list, the discussion called for by this item shall be provided. No such disclosure need be given where a court has held that the registrant need not provide the requested list under state law, or the request was not properly made under Rule 14a–7.

* * * * *

11. By amending § 240.14a–101 to revise Item 21 thereof to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 21. Voting Procedures. As to each matter which is submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions.

12. By adding § 240.14a–103 to read as follows:

§ 240.14a–103 Notice Form 14. Information to be included in statements filed by or on behalf of a person pursuant to § 240.14a–2(b)(1) (Rule 14a–2(b)(1)).

U.S. Securities and Exchange Commission—Washington, DC 20549

Notice Form 14

1. Name of the Registrant:

_____

2. Name of person relying on exemption:

_____

3. Holdings of voting securities of the Registrant:

_____

Amount of each class of securities of the Registrant entitled to vote on the matter owned beneficially by the person submitting this notice.

4. Written materials. Attach written material required to be submitted pursuant to Rule 14a–6(g)(1).

13. By adding a new section 240.14a–X to read as follows:

§ 240.14a–X Security holder analysis of management performance.

(a) *General.* If the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or a written consent in lieu of such meeting, at which directors are to be elected, subject to the conditions set forth in this section, each proxy statement furnished pursuant to § 240.14a–3 shall include the statements of security holders who meet the requirements set forth in paragraph (b) of this section with respect to the registrant's long-term economic performance and resultant shareholder value and the ability of the registrant's officers and directors to achieve, in the long term, corporate growth and resulting shareholder gain.

(b) *Eligibility of security holder(s).* (1) At the time he submits his statement, the security holder shall be the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting and have been such an owner for at least three years, and he shall continue to be such an owner through the date on which the meeting is held. If the registrant requests documentary support for a security holder's claim that he is the beneficial owner of at least ½% of such voting securities of the registrant and that he has been a beneficial owner of the securities for three or more years, the registrant shall make such request within 14 calendar days after receiving the security holder's statement and the security holder shall furnish appropriate documentation within 21 calendar days after receiving the request. Appropriate documentation of the security holder's claim of beneficial ownership shall include either:

(i) the security holder's affidavit, declaration, affirmation or similar document provided for under applicable state law which shall be supported by:

(A) A copy of such security holder's Schedule 13D, Schedule 13G, Form 13F, Forms 3, 4, and/or 5, filed with the Commission and furnished to the registrant, and all subsequent amendments reporting a change in beneficial ownership, indicating the security holder's beneficial ownership as of or prior to the date on which the relevant three-year period commenced and that beneficial ownership of the registrant's securities has continued to the time the security holder supplied his statement or

(B) In the absence of such filings, other independent evidence of compliance with the eligibility requirements of this rule or

(ii) A written statement by a record owner or by an independent third party (such as a custodian or similar entity); in either case attesting that the security holder was the beneficial owner of securities of the registrant having the right to cast at least ½% of the votes entitled to be cast in the election of directors of the registrant throughout the required three-year period and as of the date of such affidavit, declaration, affirmation, similar document provided for under applicable state law, record holder statement or third party statement, as the case may be, accompanied by the security holder's written statement that the security holder intends to continue to be such an owner through the date on which the meeting is held.

(2) A security holder who is not the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting, but who has been a beneficial owner for at least three years may contact other security holders for the purpose of forming a security holder group which, in the aggregate, is the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting. Each member of such group must have been a beneficial owner of voting securities of the registrant for at least three years in order for the group to be eligible to submit a statement. If the registrant requests documentary support for a security holder group's claim that it is in the aggregate the beneficial owner of at least ½% of such voting securities of the registrant or that the members of the group have been beneficial owners of the registrant's securities for three or more years, each member of the security holder group shall furnish the appropriate documentation provided for under paragraph (b)(1) of this section. Each member of a security holder group shall provide to the registrant the information required by paragraph (c) of this section. For all other purposes of this section, such security holder group shall be considered a single security holder.

(c) *Security Holder Information.* At the time he submits a statement, a security holder shall provide the registrant in writing with his name; address; the number of registrant's

voting securities that he holds beneficially; the dates upon which he acquired such securities; and his interest, if any, in the outcome of the vote at the meeting or in the registrant other than as a security holder.

(d) *Timeliness.* The security holder shall submit his statement sufficiently far in advance of the meeting so that it is received by the registrant within the following time periods:

(1) A statement to be mailed with a proxy statement relating to an annual meeting shall be received at the registrant's principal executive offices not less than 120 calendar days in advance of the date of the registrant's proxy statement was released to security holders in connection with the previous year's annual meeting of security holders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a statement shall be received by the registrant a reasonable time before the solicitation is made, taking into account other provisions of this section with respect to the times for the taking of actions.

(2) A statement to be mailed with a proxy statement relating to any meeting other than an annual meeting specified in paragraph (d)(1) of this section shall be received a reasonable time before the solicitation is made, taking into account other provisions of this section with respect to times for the taking of actions.

(e) *Number of Statements.* A security holder may not submit more than one statement for mailing with the registrant's proxy statement for a meeting of security holders.

(f) *Contents of the Statement.* (1) The statement shall be limited to the opinion of the security holder with respect to:

(i) The registrant's long-term economic performance and resultant shareholder value and

(ii) The ability of the registrant's officers and directors to achieve, in the long term, corporate growth and resulting shareholder gain and the reasons for such opinions. The statement shall also include the information, for the security holder and for each member of any security holder group, required to be furnished pursuant to paragraph (c) of this section. The statement shall not exceed 700 words excluding any tables, charts or graphs and the information required by the preceding sentence. The registrant shall not be responsible for such statement.

(2) If one or more statements have been submitted by security holders, there shall be set forth in the proxy statement under the caption preceding information with respect to the election of directors the following statement: "Accompanying this proxy statement is a statement(s) submitted by a security holder(s) expressing opinions with respect to the performance of the company." If a statement on behalf of management has been prepared, the following statement shall also be set forth in bold type under such caption: "Also accompanying this proxy statement is a statement authorized by the Board of Directors in response to the statement(s) submitted by the security holder(s)."

(g) *Omission of Statements.* The registrant may omit a statement from the mailing of its proxy statement if any of the following grounds for exclusion apply:

(1) The registrant may omit all statements from the mailing of its proxy statement if any of the registrant's security holders files a Schedule 14B with the Commission, commencing a proxy election contest involving two or more non-management director nominees, by five calendar days prior to the date the statements are expected to be distributed.

(2) The registrant is only required to mail with its proxy statement three statements it receives which satisfy the requirements set forth in this section. In the event that more than three statements are received by the registrant which may not be omitted from the mailing pursuant to paragraph (g)(1) of this section, the registrant's independent accountants shall, after excluding all statements from security holders who within the preceding three years have had a statement mailed by the registrant pursuant to this section, determine by lot the three statements which will be mailed with the registrant's proxy statement.

(h) *Supporting statement.* In the event a registrant determines to omit a statement from the mailing of its proxy statement because such statement was not selected for mailing by the accountants pursuant to paragraph (g)(2) of this section, the registrant shall promptly notify the security holder that his statement will not be mailed with the proxy statement in which case such security holder shall request from the registrant, within seven calendar days after receiving notice that his statement will not be mailed with the registrant's proxy statement, a copy of the statements to be mailed with the proxy statement and the registrant shall furnish appropriate copies to the security holder within seven calendar days after receiving the request. If such security holder decides to support one of the statements to be mailed with the proxy statement, within 10 calendar days after receiving copies of the statements to be mailed with the proxy statement, such security holder shall notify the registrant of the statement he is supporting, and the registrant shall include in such statement a sentence which identifies the statement supported by the security holder, the name and address of the security holder supporting such statement, and the number of shares of voting securities of the registrant held by such security holder.

(i) *Relationship to Other Rules.* For the purpose of § 240.14a–9, any statement of a security holder or a registrant mailed pursuant to this section shall be deemed "solicitation material" and such mailing shall be deemed a "solicitation." A communication with security holders for the purpose of obtaining support for a statement to be submitted to the registrant pursuant to paragraph (b)(2) of this section shall not be subject to § 240.14a–3 or 14a–11. Security holders engaging in such communications shall comply with the notice requirements of § 240.14a–6(g) in connection with any dissemination of the proposed statement and other solicitation materials.

14. By amending § 240.14c–5 to revise paragraph (d), to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(d)(1) *Public Availability of Information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (d)(2) of this section.

(2) *Confidential Treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101) that is nonpublic and is not required to be publicly disclosed under any other provision of law, then all copies of the preliminary information statement filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) the information statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter);

(ii) at the time of filing, a separate copy of the information statement is sent to the Secretary of the Commission

together with a written request for confidential treatment; and

(iii) the filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

15. By amending § 240.14c–101, (Schedule 14c) to add a new Item 5 thereto to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

* * * * *

Item 5. *Statements of Security Holders.*

Include all statements of security holders that would have been required to be forwarded to security holders pursuant to Rule 14a–X (§ 240.14a–X) if proxies were to be solicited in connection with the meeting.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 249 continues to read, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

17. By amending Form 10–Q (§ 249.308a) to revise paragraph (c) and Instruction 4 of Item 4 Part II to read as follows:

Note—The text of Form 10–Q does not and this amendment will not appear in the Code of Federal Regulations.

§ 249.308a Form 10–Q, for quarterly and transition reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

Form 10–Q

* * * * *

Part II

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

If any matter has been submitted to a vote of security holders during the period covered by this report, through the solicitation of proxies or otherwise, furnish the following information:

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter or nominee.

* * * * *

Instructions

4. Paragraph (c) must be answered for all matters voted upon at the meeting, with respect to both contested and uncontested elections of directors.

* * * * *

18. By amending Form 10–K (§ 249.310) to revise paragraph (c) and Instruction 4 of Item 4 of Part I to read as follows:

Note—The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

Form 10–K

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter or nominee.

* * * * *

Instructions

4. Paragraph (c) must be answered for all matters voted upon at the meeting including with respect to both contested and uncontested elections of directors.

* * * * *

By the Commission.

Dated: June 23, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–15252 Filed 7–1–92; 8:45 am]

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SECURITIES and EXCHANGE COMMISSION

17 CFR Parts 229 and 240

[Release No. 33–6940; 34–30851; File No. S7–16–92]

RIN 3235–AF34

Executive Compensation Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment proposed amendments to the executive compensation disclosure requirements applicable to proxy statements, periodic reports and other filings under the Securities Exchange Act of 1934, and to registration statements under the Securities Act of 1933. The proposed amendments are intended to make disclosure of compensation paid or awarded to executive officers clearer and more concise, and of greater utility to shareholders. New provisions would require a report by the Board Compensation Committee, or in its absence, the Board of Directors, on the bases for its compensation decisions in the last fiscal year with respect to the Chief Executive Officer and the other named executive officers, and the relationship of such compensation to company performance, together with a graph comparing the cumulative return on the company's common stock with the Standard and Poor's 500 Stock Index over at least the last five years, and with the return on either a nationally recognized industry index or a registrant-constructed peer group index. Additional disclosure is proposed, for certain registrants, regarding the relationships of the Compensation Committee members to the registrant.

DATES: Comments should be received on or before August 31, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–16–92. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Catherine T. Dixon at (202) 272–2589, or Gregg W. Corso at (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to the proxy rules [1] and Item 402 [2] of Regulation S–K, as well as Item 10 of Schedule 14A,[3] and Item 11 of Form 10–K.[4] These amendments would modify disclosure of executive compensation in proxy statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),[5] and registration

[1] 17 CFR 240.14a–1 *et seq.*

[2] 17 CFR 229.402.

[3] 17 CFR 240.14a–101, Item 10.

[4] 17 CFR 249.310, Item 11.

[5] 15 U.S.C. 78a *et seq.*

statements under the Securities Act of 1933 ("Securities Act").[6]

Table of Contents

I. Executive Summary

The Commission today is proposing substantial revisions to its rules governing disclosure of executive compensation. The proposed amendments are intended to provide shareholders with a clear and concise presentation of compensation paid or awarded to executive officers, and the directors' bases for making such compensation decisions.

To this end, the Commission is proposing to consolidate the requisite disclosure in a series of tables that would set forth in a clear and understandable manner each element of compensation paid, earned or awarded in a given year. General descriptions of most compensation plans no longer would be required. A new Summary Table also would provide an overview of each compensatory item paid to, or earned or received by the Chief Executive Officer ("CEO") and the four other most highly paid executive officers over each of the preceding three years, enabling shareholders to discern clearly any trends in the registrant's approach to compensating its executives, and to compare the registrant's executive pay practices with those of other registrants. Shareholder understanding of this information would be enhanced further by a proposed report by the Board Compensation Committee (or, in its absence, the full Board or other committee performing a similar function) discussing the specific factors upon which each named executive's compensation was based in the last fiscal year, and explaining how each named executive's compensation package relates to corporate performance. Accompanying this report would be a graph comparing the cumulative returns to the company's shareholders over a period of at least the last five years to the return on the Standard and Poor's ("S&P") 500 Stock Index, and the return on either a nationally recognized industry index or a registrant constructed peer group index. The registrant would be free to include additional graphs using other performance measures.

Expanded disclosure of directors' business relationships with the registrant is proposed for registrants that (1) do not have a compensation committee composed entirely of non-employee directors; (2) have interlocking compensation committees or, in the absence of a compensation committee, interlocking directorships; or (3) have repriced or amended outstanding options during the most recent fiscal year. Certain exceptions would be made for small businesses that would be eligible to file on proposed Form 10–KSB.

These proposals are part of the Commission's initiative, announced in February of this year, to enhance the workings of market forces with respect to executive pay. This initiative includes providing shareholders with information about executive compensation that is easier to understand and more relevant to proxy voting and investment decisions, and permitting shareholders greater opportunity to make their views about the board's compensation decisions known to the directors. Effective earlier this year, the Commission staff began to require companies to include shareholder proposals on executive compensation submitted pursuant to Rule 14a–8 [7] in their proxy statements. While these resolutions are advisory in nature, they allow shareholders to provide direct input to the board on its compensation decisions.[8]

[In percent]

	For	Against	Abstain
Aetna Life & Casualty Co	7.5	80.3	12.2
Baltimore Gas & Electric Co	12.2	83.6	4.2
Bell Atlantic Corp	10.9	74.6	14.5
Black Hills Corp	36.9	47.6	15.5
Chrysler Corp	5.6	79.5	14.9
Eastman Kodak Co	15.9	67.8	16.3
Equimark Corp	16.5	81.4	2.1
Int'l Business Machines Corp	16.7	83.3	*
Reebok Inc	19.2	51.9	28.9

* Not available.

The goals of the Commission initiative are to assure that shareholders are well informed and that all the facts regarding the compensation that the shareholders are paying are out in the open, and to foster better accountability of the board of directors to the shareholders.

II. Proposed Disclosure Framework

Since adoption of the current compensation disclosure requirements nine years ago, executive compensation design and practice have undergone significant changes. While systems were developed in the 1970s primarily to ensure current pay delivery, the contemporary focus is increasingly on long-term compensation to provide management with incentives to create shareholder value.[9] This trend toward increased use of long-term stock compensation reflects the commonly held view that "real ownership builds commitment and risk on the part of executives and positively influences long-term decision-making." [10] Recently,

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 240.14a–8.

[8] Nine of the proposals that the Commission decided should be included under the new policy have come to a vote. Reported results of the voting on the nine proposals were as follows:

[9] See L. Brindisi, Executive Compensation Links to Shareholder Value Creation, reprinted in Executive Compensation: A Strategic Guide for the 1990's 273 (Foulkes, ed. 1991).

[10] Frederic W. Cook & Co., Long-Term Incentive Grants among the Top 200 Industrial Companies (November 1991).

these changes have accelerated, with long-term incentive compensation overtaking the more traditional fixed salary and bonus to become the largest single component of the total mix of the typical executive pay package.[11] The growing use and multiplicity of these plans have made executive pay packages extremely complex, and have led to reporting of compensation that many shareholders find incomprehensible. While a number of companies have sought to simplify their disclosures and to provide clear tabular presentation of senior executive compensation packages, many have not. The proposals made today are intended to remedy this situation.

A. Item 402 of Regulation S–K

The Commission is proposing to revise Item 402 of Regulation S–K and related provisions to improve the quality of current compensation disclosure, in large part by focusing disclosure on compensation paid or awarded in a given fiscal year and eliminating the general description of compensation plans.[12] The proposed rules would mandate the presentation of material pay-related information in a series of tables and charts. A new requirement that the compensation committee of the registrant's board of directors discuss and analyze the bases for the compensation paid or awarded to the Chief Executive Officer ("CEO") and the other four most highly paid executives is intended to provide a clear, specific and concise explanation from the responsible directors of their compensation determinations, and the relationship of each named executive's compensation to corporate performance. A graphic presentation of registrant shareholder return compared to the return on the S&P 500 Stock Index and either a nationally recognized industry index or a registrant-constructed peer group would be required to assist shareholders in assessing the company's performance.

Commenters are invited to provide suggestions or recommendations for streamlining and simplifying the presentation of executive compensation disclosure. Are there alternative means of presenting material executive pay information in a more clear, concise and comprehensible manner?

1. Designation of Named Executives and Executive Group

Except as necessary to assure inclusion of the CEO or other person serving in this capacity, the Commission does not propose to alter the range of executives subject to individual disclosure of executive compensation, or to modify the executive group reporting requirement. However, the proposal will raise the present disclosure threshold of $60,000 annual compensation with respect to individual executive officers other than the CEO, to $100,000. The Commission requests comment on the appropriateness of increasing the disclosure threshold from $60,000 to $100,000 to reflect generally inflation since the rule was last revised. Should the threshold be higher or lower?

Unlike the current rules, individual disclosure of CEO compensation will be required regardless of the nature and amount of such compensation. In determining the four other most highly paid executive officers to be subject to individual disclosure, the aggregated compensation reported in the Annual Compensation section of the proposed Summary Table would be used.

Some commenters have suggested that the number of executive officers subject to individual disclosure could be reduced from five to three. Others maintain that the number of named executives instead should be increased to provide individualized pay information for all executives serving as directors, regardless of whether they are among the five most highly compensated. Comment is requested concerning such proposals to decrease or increase the number of executive officers subject to individualized disclosure under Item 402.

The proposed rules continue to remind registrants that an officer of a subsidiary with policy making functions may be an executive officer of the registrant and, if one of the four highest paid aside from the CEO, must be the subject of individualized pay disclosure. Subsidiary officers who may be executive officers of the registrant and subject to individual pay disclosure are the same individuals who must be disclosed as executive officers of the registrant for purposes of all periodic reports under the Exchange Act.[13]

Finally, the Commission is proposing to require, for any executive officer as to whom individual pay information otherwise is required, disclosure on an individualized basis of compensation attributable to that portion of the fiscal year in which that executive did not serve as an executive officer.

As noted, the proposal continues the current requirements for disclosure of compensation paid or awarded to all executive officers as a group, with the number of persons in the group to be stated without naming the officers. Comment is requested whether group disclosure continues to be necessary in each of the proposed tables discussed below.

2. Summary Table

To provide shareholders a concise, comprehensive overview of compensation awarded, earned or paid in the reporting period, registrants will be required to present a summary of all such compensation in tabular form. This new Summary Table will replace the cash compensation table now required,[14] and include information for the named executives individually, and in the aggregate for the executive group, for each of the last three fiscal years. Data would be furnished for the three years for the individual executive and group members designated for the last fiscal year. As under the current rule, the proposed rule is intended to require disclosure of all forms of executive compensation [15] received from the registrant (and its subsidiaries), whether pursuant to a plan [16] or otherwise,[17] or through a third party.[18] At the same

[11] See W. James, Reality and Perception of Executive Compensation, reprinted in Performance and Compensation: An Issue of Corporate Governance 62–63 (Jan. 13, 1992, J.L. Kellogg Graduate School of Management, Northwestern University). See also T. Jaenicke, Issues in Corporate Governance: Executive Compensation, Investor Responsibility Research Center (1991).

[12] Foreign issuers reporting on Form 20–F, which contains its own compensation disclosure requirements, would be unaffected by these proposed changes to Item 402.

[13] See Rule 3b–7 under the Exchange Act [17 CFR 240.3b–7].

[14] See Item 402(a) of Regulation S–K [17 CFR 229.402(a)].

[15] An instruction to the proposed Summary Table makes clear that compensation reported in the Summary Table in a prior year need not be included in compensation reported in the table for a later year.

[16] For purposes of the revised provision, the Commission is retaining the present comprehensive definition of the term "plan." Instruction 3 to S–K Item 402(b) (and Instruction to proposed Item 402(a)(2)) provides that, [t]he term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

[17] No change is proposed to the current requirement in Item 402(c) [17 CFR 229.402(c)] that any compensation paid other than in cash or pursuant to a plan, as defined *supra* in n.15, must be disclosed if in excess of the lesser of $25,000 or 10% of cash compensation. (Proposed 402(b)(2)(C)).

[18] The Commission is retaining (but redesignating as proposed Item 402, General Instruction 2) current General Instruction 2 to Item 402, which brings within the scope of the Item "transactions between the registrant and a third party where the primary purpose of the transaction is to furnish

Continued

time, an instruction will make clear that, if a registrant has not paid or awarded executive compensation in a form prescribed by a particular column over the last three years, that column may be omitted.

A three-year, annualized look-back is being proposed to enable shareholders to discern trends in the registrant's compensation of its senior executives, and to compare the registrant's pay practices with those of other registrants. Comment is invited on the necessity or appropriateness of the proposed three-year disclosure. Should the Summary Table instead cover the preceding two fiscal years, or be limited to the last fiscal year?

The proposed table is set forth below, followed by an explanation of the types of compensation included in each column.

SUMMARY COMPENSATION TABLE

Year	Name and principal position or number in group	Annual Compensation			Long term compensation					Other ($)
		Salary ($)	Bonus ($)	Other compensation ($)	Restricted stock award(s) ($)	Accrued dividends on restricted stock ($)	Long-term incentive payouts ($)	Stock options (#)	SARs (#)	
_____	CEO									
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a. *Salary and bonus.* Now permitted to be aggregated in the cash compensation table, base salary and annual bonus will be broken out in separate columns in the new Summary Table. Shareholders and others who rely on executive compensation information have expressed substantial interest in analyzing bonuses apart from salary.[19] The single figure in the bonus column will reflect both cash and noncash payments, including stock bonuses.

Compensation earned in a given year but deferred will be reported in the column containing the category of compensation to which it corresponds, regardless of how the award eventually will be paid (in cash, stock, or other securities or property). For example, salary deductions pursuant to a registrant thrift plan would be included in the column for salary.

Some company plans permit an executive to receive options or restricted stock in lieu of a portion of the executive's salary or bonus. In such a case, the executive would report the options or restricted stock received pursuant to such election under the option or restricted stock column, and footnote the election under the salary or bonus column. Although the dollar amount forgone need not be included in the salary or bonus column, this amount still will be used to determine the four most highly paid executive officers who, together with the CEO, will be subject to individualized reporting under the proposal.

Comment is sought on the proposed allocation of salary and bonus information in two separate columns. Commenters also should address the proposed method of reporting of deferred compensation.

b. *Other annual compensation.* All additional forms of current cash and non-cash compensation paid, awarded or earned during each of the three prior fiscal years will be reported in the "Other Annual Compensation" column. Such items will include the registrant's annual contributions, payments or accruals on behalf of each named executive and the executive group, both to tax-qualified and to non-tax-qualified retirement plans. Also combined in this aggregate figure will be the cash value of significant perquisites and other personal, non-plan benefits now required to be disclosed pursuant to existing Item 402(c). Finally, this column will include the value of amounts paid, allocated or accrued in respect of deferred compensation plans, including premiums paid annually by the registrant on insurance-funded deferred compensation arrangements. Dividends paid on restricted stock will be reportable under this column when such dividends are not subject to restriction.

(1) Personal benefits or perquisites. Other than requiring inclusion of their aggregate value in the Summary Table, the proposal will not change existing requirements established by current Item 402(c) for reporting perquisites and other non-cash, non-plan benefits paid or distributed to the named executives and the executive group. Each of these benefits must be included in the "Other Annual Compensation" column and identified (by type and dollar amount) in

compensation to any named individual [executive] or the [executive] group . . . [unless] the transaction has been reported in response to Item 404 of Regulation S-K."

[19] A corporate executive's base salary reportedly is fixed primarily on the basis of position, rather than corporate or other performance measures, while bonus and other annual incentive pay levels often are linked to achievement of performance-related goals or targets. *See* Joint Study of the American Compensation Association and KPMG Peat Marwick, *Executive Pay and Company Performance* 20–23, 36–31 (1991). Separate salary and bonus information thus would enable shareholders to determine how much of an executive's annual pay is performance-sensitive.

a footnote to the Summary Table for each named executive and the executive group, but only if the aggregate amount is equal to or exceeds the lesser of either $25,000 or 10% of the total compensation reported in the sum of the Salary and Bonus columns for the individual executive or the group.[20] Dollar amounts assigned to perks and other personal benefits will continue to be calculated on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

As under the current item, payments under group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or other operation in favor of executive officers and directors, and that are available generally to all salaried employees, need not be reported.

(2) Annual registrant contributions to pension and other retirement plans. Registrants commonly make contributions to pension, profit-sharing, stock bonus and other retirement plans on behalf of executive participants during their terms of employment. Some of the plans in which senior executives participate may be "nondiscriminatory," or open at a minimum to all salaried employees,[21] whereas other such plans are "discriminatory," in that coverage is restricted to top executives and directors.[22] Registrants currently must disclose all contributions to plans in both categories that either are made or credited to the named executives and, in the aggregate, to the executive group, provided the executive's interest in the accrued benefits has vested. These amounts are reportable regardless of the cash or non-cash form of an annual contribution, payment, or accrual. No change in this obligation is proposed, except to mandate inclusion of these amounts in the new Summary Table. Comment is request as to the appropriateness of deleting the exception for payments where the accrued benefits are not vested.

Comment is requested as to the need for any additional information with respect to these retirement-related employer contributions, payments, or accruals on behalf of executive officers. As proposed, the information will be included within the single dollar amount reported under Other Annual Compensation, but not identified further in a footnote. Is there a need to disclose these payments separately by footnote?

(3) Amounts paid, allocated or accrued annually under deferred compensation plans. Amounts paid, allocated or accrued during the fiscal year under deferred compensation plans, or pursuant to any other long-term incentive arrangement (other than dividends on restricted stock that are accrued rather than actually paid to the executive, which amounts will be disclosed in a separate column) will be included in the "Other Annual Compensation" column, and identified by amount, type and/or rate in a footnote to the Summary Table. This sum would include not only amounts allocated or paid annually by the registrant pursuant to deferred compensation arrangements, but also interest or dividends accruing or paid on such amounts.

Because significant amounts of deferred compensation often accumulate in the compensatory accounts of top executives of public companies, the interest and/or dividends allocated to or accruing on such accounts alone has come to represent a significant component of post-retirement replacement income for some senior executives. Therefore, the proposal would delete the current provision permitting exclusion of interest on deferred compensation where the rate did not exceed prevailing market rates either when the underlying plan was established or the interest accrued.[23] This revision would also address concerns that have been raised with respect to the interest levels that some registrants have deemed to be at the market rate so as to justify nondisclosure. Where interest or dividends payable on deferred compensation is variable depending on factors such as period of employment, the amount includable should be calculated assuming all contingencies to receiving interest or dividends at the highest rate will be met. The footnote disclosing the rate will list the contingencies, and may disclose the rate and amount payable if the contingencies are not met.

(4) Annual premiums on insurance-funded deferred compensation arrangements. Another form of executive compensation that will be reported in the "Other Annual Compensation" column and identified by type and amount in an accompanying footnote involves registrant-paid premiums on executive insurance policies, which are used by some companies to fund deferred compensation for executives. In some cases, the policies are initially owned and paid for by the company, with higher premiums payable in the early years. At retirement or some other time when the premiums are low and the policy has a significant cash surrender value, the policy is transferred, or "rolled out," to the executive, often for nominal consideration. Under other, so-called "split dollar" insurance arrangements, the registrant and the executive each pay part of the premium either concurrently or in consecutive years, with the executive to receive deferred compensation in the form of the cash surrender value of the policy (or equivalent value) at the close of the deferral period. The "Other Annual Compensation" column will include the annual premiums paid by the employer during the executive's tenure, if there is any arrangement or understanding, whether formal or informal, that a future roll-out or other payment to, or on behalf of, the executive will be made.

c. *Restricted stock.* Registrants currently are required to disclose restricted stock awards, but may choose to provide disclosure either in the year of grant or the year of vesting. The proposed Summary Table will require reporting in the year of grant. The amount reportable will be the aggregate market value of the registrant's unrestricted common shares at the date(s) of grant. Restricted stock awarded in lieu of salary or bonus at the election of the executive will be reported in this column, rather than as salary or bonus.

d. *Accrued dividends on restricted stock.* Currently, disclosure of dividends paid or earned on restricted stock is not required unless that class of stock is available only to certain employees on a discriminatory basis. With the recent

[20] This test parallels current Item S-K 402(c), but deletes references to cash.

[21] Employer contributions may be made in respect of executive officers to such broad-based plans; for example, to tax-qualified profit sharing plans conforming to the requirements of Internal Revenue Code Section 401(k) [26 U.S.C. 401(k)]. Both these contributions and any executive contributions in the form of salary, bonus or other compensation deferrals are now, and will continue to be disclosed.

[22] Such plans include "excess benefit plans," which provide retirement benefits to an executive equal to the amount by which his or her annual contributions and/or benefits under a tax-qualified plan exceed dollar limitations imposed by the federal tax code (*see* Internal Revenue Code Section 415 [26 U.S.C. 415]), and supplemental executive retirement plans, or "SERPs," which term encompasses any formal, informal or individually negotiated arrangement providing supplemental retirement benefits to selected executives beyond those available under the employer's qualified retirement plans. Any employer contributions and executive deferrals in respect to plans falling in either category must be reported under current Regulation S-K Item 402(a) and (b), and will continue to be reported under the proposals.

[23] *See* General Instruction 3 to Item 402. No such limitations currently apply (*see id.*), or will apply under the proposed revisions, with respect to dividends payable on any form of deferred stock or stock-based compensation other than restricted stock.

increase in large grants of restricted stock to top executives, often of the same class of common stock widely held by the public, the amount of dividends accrued on such grants, particularly when combined with dividends on previously awarded restricted stock, may be quite substantial. As proposed, the Summary Table therefore will require such dividends to be disclosed in a separate column.

Commenters should discuss the appropriateness of separate columnar disclosure of accrued restricted stock dividends. Should dividends actually paid to the executive on unrealized restricted shareholdings be reported here, rather than in the "Other Annual Compensation" column of the Summary Table, as proposed?

e. *Pay-outs under long-term incentive plans.* The aggregate value of all payouts under long-term incentive plans made or credited during the fiscal year to the named executive officers and executive group will be required to be disclosed in the Summary Table. These plans frequently include performance units or shares payable in cash, stock, or some combination thereof, if market-based and/or company performance targets are met by the end of a specified period. Settlements or earn-outs upon maturation of stock-based instruments, other than restricted stock, stock options and stock appreciation rights ("SARs") payable in stock,[24] will be reported in this column regardless of whether actually paid, or earned but deferred.

Disclosure of pay-outs or settlements of awards under long-term incentive plans, or plans under which compensation will not be received until after a period of more than one year, currently is required. However, this information has been particularly difficult to analyze because it frequently is provided in a discursive narrative form. The Summary Table will require no new information with respect to the value of cash and cash-equivalents received or credited upon settlement or maturation of performance units or shares.[25] As required today, the reported figure will include amounts credited and payable to an executive recipient during or at the end of the plan's performance measurement period.

f. *Stock options and SARs.* As proposed, the number of stock options and non-tandem, or freestanding SARs payable in stock [26] awarded in each of the preceding three fiscal years will be reported in separate columns in the Summary Table. While the Commission has considered requiring valuation of options granted for purposes of reporting in the Summary Table, shareholders may be better served by disclosure of a range of potential realizable values based on various assumed stock appreciation rates.[27] Thus, the proposal includes a companion table to the Summary Table as follows:

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

Name	Strike price above market price at grant N% ($)	50% ($)	100% ($)	200% ($)
CEO				
#1				
#2				
#3				
#4				
Group				

The proposed table will disclose, for the CEO and other named executives and the executive group, the gain or "spread" that would be realized if options or freestanding SARs (payable in stock) were exercised when the registrant's stock price had appreciated by the specified percentage levels from the market price on the date of grant.[28] The first appreciation column is proposed for use by those registrants that have established minimum stock price appreciation levels, sometimes referred to as "hurdles," or any other performance benchmark that must be reached before all or part of a particular grant becomes exercisable. A stock price appreciation rate would be used that would demonstrate the effect of the premium strike price.

Each tranche of an option grant with a differing hurdle or other performance threshold should be treated as a separate grant for purposes of this table. Depending on the number of these so-called "premium" or "performance-based" grants made in the last fiscal year, or the number of tranches within a single such grant, additional columns, with percentage levels at each of the hurdles substituted for the "N%," in the above table will be used to show the range of values for each such grant or tranche.

Illustration

To illustrate this use of the first column, suppose a company made two 50,000-share option awards during a given fiscal year to its CEO, one award with an exercise price fixed at fair market value at the date of grant of $20.00, and the other award with two 25,000-option tranches, each exercisable at a strike prices at specified percentage levels of 25% ($25) and 40% ($28), above the fair market value of the stock at the time of grant. Under the proposal, the company would substitute two columns for the single (N%) column depicted above to reflect the potential gain on each one-half increment of the grant if a particular hurdle were to be achieved, resulting in a total of five columns in the table. Potential gain on the 50,000 premium priced options, as well as the other 50,000 options exercisable at fair market value, then will be disclosed as for any other grant run through the hypothetical scenarios reflected in the remaining columns.

[24] For purposes of this disclosure, SARs payable in stock or cash at the election of the registrant or the executive-recipient would be deemed payable in stock.

[25] A more detailed presentation of award and settlement information for the prior fiscal year will be contained in separate tables, discussed *infra*.

[26] For purposes of this disclosure, SARs payable in stock or cash at the election of the registrant or executive-recipient will be deemed payable in stock.

[27] The Financial Accounting Standards Board ("FASB") is currently considering the accounting for stock options and other similar awards. The Commission's Chief Accountant is currently engaged in a study of the issues and the Commission has reached no conclusions on the appropriate accounting for stock options. The disclosure requirements proposed herein do not reflect any judgment with respect to the issues currently being addressed in the FASB project.

[28] With respect to the designated range of possible stock price appreciation levels in the last three columns of the proposed table—(50%–200%)—it should be noted that, between 1925 and 1991, the geometric average annual capital appreciation rate for the S&P 500 Stock Index was 5.4 percent, which would result in a 10-year capital appreciation of 70%. See R. Ibbotson, Stock, Bonds, Bills and Inflation Yearbook (1991).

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

Name	Grant	25%	40%	50%	100%	200%
	(number)	(dollars)	(dollars)	(dollars)	(dollars)	(dollars)
CEO	[1] 50,000	$250,000	$400,000	$500,000	$1,000,000	$2,000,000
	[2] 25,000	.....	75,000	125,000	375,000	875,000
	[3] 25,000	.....	.....	50,000	300,000	800,000

[1] Strike price $20.
[2] Strike price $25.
[3] Strike price $28.

Commenters are invited to discuss the costs and benefits of the proposed tabular approach. Will the information proposed to be included in this table provide meaningful disclosure regarding the potential realizable value of options and SARs? Will disclosure of gains at various stock price appreciation rates provide a reasonable means of making inter-company comparisons? Comment is requested on the appropriateness of the assumed stock price appreciation rates proposed. Commenters are invited to suggest alternative rates. Are such comparisons necessary or appropriate to an understanding of the registrant's option compensation scheme? Or would Commission-mandated use of a specific option pricing methodology, such as the modified Black-Scholes model commonly used in the pay consulting industry,[29] result in more meaningful disclosure? Commenters recommending alternative means of furnishing valuation information should describe in full the methodology and supporting rationale.

Should certain classes of issuers be exempted from one or more of the columnar disclosure requirements based on size (*e.g.*, pursuant to an asset or market capital test, proposed "small business" issuer [30] definition, nature of trading market, trading history) or other appropriate criteria?

Registrants whose compensation committees or boards of directors must furnish a signed report explaining the basis for any repricing or other material amendment of outstanding executive stock options and non-tandem SARs (whether payable in stock or cash),[31] will be required to add another column reflecting the number of replacement or amended options or freestanding SARs under the heading "Repriced or Amended Options." Comment is sought on the appropriateness of requiring this columnar disclosure.

g. *Other compensation.* All compensation awarded or paid to, or earned by, the named executive officers and executive group during a given fiscal year is to be reported in the Summary Table. It is anticipated that generally all such compensation will be reportable under the preceding columns. Where, however, an executive officer earned, or is paid or awarded compensation that the registrant believes is not properly reported under these columns, and such compensation is not permitted specifically to be excluded, the value of the compensation should be reported in the "Other" column with a footnote disclosing the nature and terms of the compensation.

This column also will be used to report termination or severance awards in excess of $60,000, including golden parachutes, made or distributed to a named executive officer or member of the executive officer group during the three fiscal years covered by the Summary Table. In a change from current requirements, this information will be required even if paid after the executive ceased being an executive officer, but during a fiscal year covered by the Summary Table.

3. Components of Compensation

a. *Proposed stock option and SAR tables.* Compensatory stock options represent one of the most rapidly growing areas of executive compensation. Recent studies indicate that more than 90% of the leading 200 American industrial and service corporations, respectively, compensate their executives through awards of stock options.[32]

Under current requirements, registrants must disclose certain aggregate information with respect to options (alone or with tandem SARs) and freestanding SARs granted during the last fiscal year, including the total number of options/SARs granted, the average exercise price and realized gain (spread) on exercise. Unless the exercise price is less than the stock price at grant, registrants are under no obligation to assign any value to the options or SARs on grant date, or to break out individual grant and exercise information as to price and amount that might serve to reveal repricings or "swaps," [33] certain types of reloads,[34] and other risk-diminishing mechanisms. Nor do current disclosure standards call for particularized information on risk-enhancing option features now supported by many shareholders, such as awards of options with strike prices indexed to broader market indices or performance-based vesting requirements.

Under the proposed rules a general description of option and SAR plans no longer will be required. Disclosure instead will focus on the extent of the company's use of options, individualized grant and exercise information, option repricings, and unexercised options and non-tandem SARs payable in stock [35]

[29] See Hewitt Associates, Overview of Long-Term Incentive Valuations 3 (1991).

[30] Recently defined by the Commission, in proposing streamlined reporting requirements for small business issuers, as an issuer that meets all of the following criteria:

(1) Had revenues of less than $15 million during its last fiscal year;

(2) Is not a foreign private issuer or a foreign government;

(3) Is not an investment company; and

(4) Is not a wholly owned subsidiary of a non small-business issuer.

Securities Act Release No. 6924 (March 11, 1992) [57 FR 9768].

[31] See section II.A.7., *infra* (discussing this report).

[32] Frederic W. Cook & Co., Long-Term Incentive Grants Among the Top 200 Industrial Companies 2 (Nov. 1991); Frederic W. Cook & Co., Long-Term Incentive Grants Among the Top 200 Service Companies 2 (Nov. 1991).

[33] An option "swap" is a repricing or replacement of an old option, resulting in an option bearing an exercise price at, or closer to, the current, more favorable market value of the underlying common stock. For example, if an executive is given an option to purchase company stock at $25 while the stock is trading at or near that price, and the stock price subsequently drops to $15, the option is not likely to be very valuable. In some cases, a company will cancel an executive's old option with an exercise price of $25 and replace it with a new option with a $15 exercise price.

[34] As generally understood, a "reload" is an option feature under some compensatory plans providing for the grant of a new option upon the exercise of all or part of the original option before expiration of its term, thereby allowing an executive to benefit several times under a single option award for any rise in the stock price. Depending on the terms of the particular plan, the exercise price may be paid in stock or cash.

[35] For purposes of all tables described in Section II.3.a. of this Release, the terms "SAR" and "SAR

Continued

held by executive officers at year end. To facilitate shareholder understanding, a tabular format for these disclosures will be required. For further information on the general provisions or operation of a plan, shareholders can look to the underlying plan document filed as an exhibit to the Form 10–K reporting on the year the plan was adopted or materially amended.[36]

Comment is requested on the proposed elimination of general plan description, and the proposed reliance on the plans filed as exhibits as a source of such information. Should a summary description of the terms and operation of the plan continue to be required, either as part of the Form 10–K, or part of an exhibit with the plan?

(1) Option and SAR Report. Under the proposed rules, registrants will be required for the first time to provide in capsulized form the extent of their use of options, alone or in combination with tandem SARs and non-tandem SARs (payable in stock or cash) for compensation at all levels of the company and for executive compensation. The required capsule information must be set forth in the following table:

Option and SAR Summary Report

Total Number of Common Shares Outstanding at Fiscal Year-end	_____
Total Number of Common Shares Authorized To Be Granted as Options or SARs	_____
Percentage of Total Common Shares Outstanding Authorized	_____
Total Number of Options or SARs Granted To Date Under Current Authorization	_____
Percentage of Total Authorizations	_____
Total Number of Options or SARs Granted in Fiscal Year	_____
Total Number of Options or SARs Granted to Named Executives in Last Fiscal Year	_____
Percentage of Total Number of Options or SARs Granted to Named Executive Officers	_____
Total Number of Options or SARs Granted to CEO in Last Fiscal Year	_____
Percentage of Total Number of Options or SARs Granted to CEO in Last Fiscal Year	_____
Total Number of Options or SARs Granted to Executive Group in Last Fiscal Year	_____
Percentage of Total Options or SARs Granted to Executive Group in Fiscal Year	_____

Comment is requested on the utility of the proposed presentation. Is there additional information that should be required, such as the number of options granted to all non-executive employees and/or non-employee directors?

(2) Option and SAR grants. By contrast with current requirements, which permit aggregation and use of annual weighted average exercise price and narrative disclosure,[37] the proposed rules will require a tabular presentation of individual grants of options and non-tandem SARs payable in stock,[38] that were made during the preceding fiscal year to each of the named executives and the executive group.[39] Through this itemization of awards made to senior executives in a particular year, shareholders will be able to ascertain the precise relationship between the exercise price and the market price on the date of each grant, the number and size of awards made that year, and the expiration date of these instruments. This move to grant-specific presentations is proposed in response to comment that aggregated data has not been sufficiently informative to shareholders.

The proposed tabular format for presentation of information regarding individualized grants of options, alone or in tandem with SARs, or freestanding SARs payable in stock, follows:

INDIVIDUAL GRANTS IN THE LAST FISCAL YEAR

Name	Date [1]	Options granted (#)	SARs granted (#)	Exercise or base price ($/Sh)	Market price at grant ($/Sh)	Unconditional vesting date [2]	Expiration date
CEO	(1)						
	(2)						
	(3)						
#1	(1)						
	(2)						
	(3)						
#2	(1)						
	(2)						
	(3)						
#3	(1)						
	(2)						
	(3)						
#4	(1)						
	(2)						
	(3)						
Group.							

[1] Three grants per named executive are shown for illustrative purposes only.
[2] Continued employment is not deemed a condition of vesting for purposes of this disclosure.

Options granted at the same time but with different terms—such as hurdle rates, other performance-based conditions to exercisability, or staggered vesting periods—shall be treated as separate grants. Additional terms of the options awarded, including tandem SARs and performance-based conditions to vesting of all or part of an option award, will be disclosed in a footnote to the table. Shareholders and others have expressed concern with respect to various methods used to minimize or reduce executive risk with respect to option compensation, thereby misaligning managerial and shareholder interests, and have suggested that "reloads" and other risk-minimizing

payable in stock" both will refer to SARs payable in stock, or in stock or cash at the election of the registrant or the executive-recipient.

[36] *See* Form 10–K, Item 14(c); Item 601(b)(10)(iii)(A) of Regulation S–K.

[37] Schedule 14A, Item 10.

[38] For purposes of this disclosure, non-tandem SARs payable in either stock or cash at the election of the registrant or the executive-recipient will be deemed to be payable in stock.

[39] Replacement grants made in connection with option repricing transactions should not be included in this table, but will be disclosed in the Summary Table (see Section II.A.2., *supra*), and the new Compensation Committee Report on Option Repricing discussed *infra*, at Section II.A.7.

features of options be disclosed. Reload option grants, depending upon how they are structured, can reduce or eliminate the risk of option exercise options when stock prices have not reached maximum appreciation levels by automatically granting a new option to replace all, or a part, of the old option. Similarly, tax reimbursement mechanisms providing for registrant funding of all or a portion of an executive's exercise tax are of substantial interest to shareholders. The proposed rules will require risk diminishing or tax reimbursement arrangements to be disclosed in a footnote to the grants to which they apply. Finally, options and SARs granted in connection with the repricing or similar amendment or adjustment of a material option or SAR term would not be reported here, but instead in a separate, more detailed table illustrating a ten-year history of such transactions.[40]

The Commission requests comment on the need for, and utility of, individualized grant information. Is grant-specific data necessary in view of other option information proposed to be required? Should the table cover more than the last fiscal year? Are there other features of option or non-tandem SAR awards that should be disclosed in the grant table or footnote thereto? Should option or SAR repricings or similar transactions be included in this table, as well as the Summary Table and separate Ten-Year Option/SAR Repricing Table? Is there information required that is unnecessary or unduly burdensome?

(3) Option and SAR exercises. Option and freestanding (stock only) SAR exercise data likewise will be disclosed in tabular form, on a transaction-by-transaction basis, for the named executives and the executive group. Two items have been added to information now required with respect to option exercise. First, registrants will have to disclose at what point in the term of the options an executive chose to exercise. Commenters contend that how soon options are exercised is important in assessing how effectively these compensatory devices are linked to long-term company performance. Second, at the suggestion of some corporate commenters, the table includes a column reflecting annualization, from grant to exercise, of the gain realized.

INDIVIDUAL EXERCISES IN THE LAST FISCAL YEAR

Name	Shares acquired on exercise (number) [1]	Year granted	Year of expiration	Annualized gain (dollars)	Total gain realized (dollars)
CEO					
#1					
#2					
#3					
#4					
Group					

[1] Lines reflective of three exercises per executive have been added solely for illustrative purposes.

Comment is requested as to the need for individualized exercise information. Is any of the information proposed unnecessary? Or are there additional items that should be included? Should the table cover more than the last fiscal year?

(4) Options (and SARs) held at fiscal year-end. Finally, the proposed rule would require a report of the total number of options held by executive officers at year end, distinguishing between vested and unvested, and the aggregate amount by which the market value of shares subject to options and SARs exceeds the exercise price of in-the-money options and freestanding SARs (payable only in stock) at the end of the fiscal year.

The proposed table is depicted below:

UNEXERCISED OPTIONS HELD AT FY-END [1]

Name	Total number unexercised options held at FY-end		Value of unexercised, in-the-money options at FY-end (dollars)	
	Vested	Unvested	Vested	Unvested
CEO				
#1				
#2				
#3				
#4				
Group				

[1] For purposes of this table, the term options includes freestanding SARs payable only in stock, or freestanding SARs payable in stock or cash at the election of the registrant or the executive-recipient.

As proposed, the disclosed unrealized "spread" information would disregard underwater options, and freestanding SARs whose base price exceeds the stock's market price, in calculating the total number of outstanding options or rights. To do otherwise would erroneously suggest that such out-of-the-money rights would have an effect on the amount realized with respect to other options/SARs.

Commenters should address whether, as part of the table or a footnote thereto, disclosure should be required of the weighted average strike prices for vested and unvested options, as well as

[40] See Section II.A.7., *infra*.

for in-the-money or out-of-the-money options.

b. *Restricted stock.* The proposed rules include a required table with respect to restricted stock that will show the specifics of grants made during the year, the restricted period and the total number of restricted shares held by executive officers, with other applicable restrictions or conditions on vesting to be disclosed by footnote. Aggregated grant information for each named executive and the group will be sufficient, although individualized grant information will be required if the terms—*e.g.*, restricted period or other conditions for vesting—vary among grants to the same executive officers. Footnote disclosure will be required if the board or compensation committee reserves the right to eliminate or reduce a restriction or condition. Should the table cover grants made in the last three fiscal years? Is additional information necessary or appropriate? Is any of the proposed information unnecessary or unduly burdensome?

The proposed table follows:

RESTRICTED STOCK TABLE

Name	Restricted shares granted in last fiscal year	Length of restricted period	Total number restricted shares held at FY-end	Aggregate market value restricted shares at FY-end (dollars)
CEO				
#1				
#2				
#3				
#4				
Group				

c. *Long-term incentive compensation.* Perhaps the most complex and confusing of executive compensation disclosure elicited by current requirements is that related to long-term incentive ("LTI") plans. The difficulties of presenting clear and concise information with respect to these plans are exacerbated greatly where there is a multiplicity of such plans. The proposed rules seek to address this concern by requiring a formatted presentation that focuses principally on the terms of instruments awarded, paid or earned under LTI plans during the registrant's last fiscal year.

A. STOCK PRICE BASED PLANS—LAST FISCAL YEAR

Name	Awards			Payouts
	No. of shares, units or other rights	Grant-date value, if determinable	Performance or other period until maturation or payout	(Dollars or dollar value stock)
CEO				
#1				
#2				
#3				
#4				
Group				

B. NON-STOCK PRICE BASED PLANS—LAST FISCAL YEAR

Name	Awards				Payouts
	Target value(s) (max./min./actual)				
	Award ($/units)	Cash denominated ($) (max./min./actual)	Stock denominated (#) (max./min./actual)	Performance or other period until maturation or payout	($ or $ value of stock)
CEO					
#1					
#2					
#3					
#4					
Group					

Table A is designed to elicit information as to each award and payout made to the named executives, and all such awards or payouts made to the group, pursuant to long-term incentive arrangements under which the measurement of benefits to be received by the executive after a period of more than one year is a function of movements in the market price of the underlying registrant security. Among the diverse arrangements meeting this broad standard would be plans under which grants are made of phantom stock (in "shares" or options), freestanding, cash-only SARs, restricted stock units or dividend equivalents. Likewise reportable in this table would be performance shares payable solely on the basis of stock price performance, and not dependent on achievement of any corporate or other non-stock price performance hurdle. Similar information for other LTI instruments tied to stock price appreciation in the form of options and freestanding SARs payable solely in stock will be reported elsewhere, in the tabular option/SAR series, and therefore will not be included in this table.

Each award and earn-out or settlement under LTI plans based on criteria other than market price will be set forth in Table B individually for the named executives and, in the aggregate, for the group. Coverage therefore will extend, but not be limited to, performance-based plans linked directly or indirectly to corporate financial measures, or payments or settlements under deferred compensation arrangements. For example, the cash value of insurance-funded deferred compensation upon "roll-out" to the executive will be reported as a payout. Absent a fixed target award, registrants could include an amount, or high or low range of amounts, respectively, that potentially might be payable, or simply indicate in the table the absence of any calculable range of potential values. The table will identify plans under which actual or deferred cash or cash-equivalent settlements or payouts were made during the latest fiscal year and reported in the proposed Summary Table. Material performance-related or other governing criteria, including the time period over which the measure of benefits will be determined, will be listed in one or more footnotes to the table. The description of these criteria need not include specific performance targets.

The following hypothetical illustrates the use of these tables:

Illustration

Registrant ABC has established an omnibus long-term incentive plan for its top executives under which several instruments tied to stock price appreciation or financial performance measures are available. Awards and pay-outs of stock-related incentives to the CEO are disclosed in the first of the following tables, or Table A, while other long-term incentive awards and payouts to the CEO are disclosed in Table B.

As reflected in column (b) of Table A below, grants of cash-only SARs and restricted stock units ("RSUs") were made to the CEO in ABC's last fiscal year. A $2 million cash payment upon realization of previously awarded, cash-only SARs is shown in column (e) of the table.

STOCK PRICE BASED PLANS—LAST FISCAL YEAR

(a)	Awards			Payouts
	(b)	(c)	(d)	(e)
Name	Number of shares, units or other rights	Grant date value if determinable	Performance or other period until maturation or payout	Dollars or dollar value stock.
CEO	100,000 cash only SARs, at $65.00/share.		2 years	$2,000,000 net value from realized cash-only SARs.
	20,000 RSUs	$1,300,000	5 years.	

Under the performance unit provisions of ABC's omnibus plan, realization of cash-denominated units awarded thereunder is contingent upon the attainment of a minimum average annual compound growth in earnings per share ("EPS") of common stock of 20% over a three-year performance cycle. To permit evaluation of performance against this performance target at the end of the three year period, the value of each unit is established at the beginning of this cycle. The target value of $60 per unit is based on reaching 100% of the EPS goal, with a minimum value of $20.00/unit at 90% of the target and a maximum value of $120/unit at 130% of the target. If the 90% benchmark is not reached, the executive-recipient receives nothing. As reflected in column (b) of the table below, the CEO of Registrant ABC was granted 100,000 performance units in the last fiscal year, at a 100% target value of $60.00 per unit, resulting in a potential total value of $600,000. Consistent with the proposal, the footnote to this column does not disclose the specific EPS target, but simply explains the range of target values reflected in column (c) of the table. During the last fiscal year, as shown in the payout column (f), the CEO also earned a cash payment of $350,000 upon maturation of a performance unit award made three years ago.

NON-STOCK BASED PLANS—LAST FISCAL YEAR

(a)	Awards				Payouts
	(b)	Target value(s) (max./min./actual)			(f)
		(c)	(d)	(e)	
Name	Award [1] ($/units)	Cash denominated ($) (max./min./actual)	Stock denominated (#) (max./min./actual)	Performance or other period until maturation or payout	(Dollars or dollar value of stock)
CEO	$600,000/100,000 units	$120/20/60		3 years	$350,000

[1] The value shown in column (b) reflects the potential value of the 100,000 performance units granted to the CEO in the last fiscal year under ABC's Long-Term Performance Plan at a target value of $60 per unit, payable at the end of the three-year performance period if 100% of the targeted cumulative earnings per share growth rate is achieved at that time.

[2] Received upon settlement of 50,000 performance units granted in fiscal year 1989.

Commenters should discuss whether the proposed tables are preferable to narrative textual disclosure of awards and earn-outs paid or deferred under long term incentive plans. Are there alternative formats that would provide clearer and more concise disclosure? Is the information proposed to be required necessary, or can the data be streamlined further without depriving shareholders of material pay-related information? Is any additional

information necessary? For example, should the registrant disclose *both* the maximum possible performance target payout as well as the minimum level of corporate or other performance necessary to satisfy the requirements under a particular performance-based plan? Should the tables cover more than the latest fiscal year?

d. *Disclosure of pension and other retirement compensation.* The Commission is proposing rule changes that will streamline substantially the currently prescribed disclosure of pension and other retirement benefits. Of the plan-related information now required to be disclosed under Item 402, only annual registrant contributions, payments or accruals on behalf of a named executive or the executive group, and potentially payable benefits if determinable, will continue to be required. Annual amounts contributed or paid by registrants to retirement plans on behalf of senior executives will be reported in the proposed Summary Table. Estimates of accrued or potential post-retirement benefits, whether payable under defined contribution or defined benefit or actuarial plans, will continue to be disclosed in tabular or narrative form in accordance with existing provisions of Item 402(b).

The Commission wishes to remind registrants of their obligation under current Item 402(b)(1) to identify the entire pensionable compensation base, and to include all prospective benefits in the table, whether payable under qualified or non-qualified employee benefit plans. The requirements have been revised to make clear that all compensation included by the registrant in the pensionable compensation base under its pension plan must be disclosed.

The Commission also is proposing to eliminate now-mandated disclosure of information on the terms of broad-based, nondiscriminatory plans that are qualified under the federal tax code and meet applicable standards of the Employee Retirement Income Security Act of 1974 ("ERISA").[41] Since retirement benefits are computed under the same plan formula for all employees, from the CEO to the hourly worker, there appears to be little need for detailed disclosure beyond the registrant contributions and the annualized stream of estimated post-retirement benefits that would continue to be disclosed for each of the named executives pursuant to the pension table or alternative disclosure formats presently required.[42] Discriminatory plans pursuant to which otherwise disclosed benefits are to be paid or accrued exclusively for senior executives, such as excess benefit and supplemental executive retirement plans, will continue to be available for review as exhibits to the Form 10–K for the year in which they were adopted or materially amended.

Commenters' views on the relative costs and benefits of the new streamlined disclosure scheme are solicited. In particular, commenters should discuss whether any of the plan information proposed to be eliminated should be retained. Comments also are invited with respect to additional improvements that could be made in the presentation of retirement benefits.

4. *Enhanced beneficial ownership information.* Many corporate and shareholder commenters alike have stated that the most effective means of assessing the alignment of stockholder and management interests is by examining the nature and extent of management equity ownership in the company. Existing rules, however, call merely for disclosure of security ownership by executive officers only as a group with directors and nominees, unless a particular executive is a member of the registrant's board of directors or owns more than five percent of the registrant's outstanding stock.[43] The Commission therefore has proposed, at the suggestion of these commenters, a new table reporting senior executives' equity-based holdings as follows:

TOTAL COMMON EQUITY BASED HOLDINGS

Name	Unrestricted stock beneficially owned, excluding options/SARs	Option shares (#)	Restricted stock (number)
CEO			
#1			
#2			
#3			
#4			
Group			

SARs payable only in stock, or in stock or cash at the election of the registrant or the executive-recipient, will be included in option shares.

Comment is requested on the need for such a table in view of the other information proposed to be required. Should the Commission simply require disclosure of senior executive officers' beneficial ownership of stock?

Some proponents of such a table have included as equity-based holdings cash payable, stock-based incentives such as cash-only SARs and certain phantom stock units. The Commission specifically requests comment as to whether inclusion of such instruments in the table would be appropriate and if so, how it would be fairly measured and described.

5. *Board compensation committee report on executive compensation.* Boards of directors are obligated, as state-law fiduciaries, to protect the interests of shareholders through effective monitoring of senior executive performance. An important aspect of this duty, frequently discharged by the board through a compensation committee, is determining the level and structure of compensation that is appropriate for senior executives. Shareholders who ultimately fund executive compensation packages are entitled to know the basis for the board's compensation decisions. Accordingly, the Commission is proposing to require the compensation committee or, in its absence, the entire board of directors, to provide a signed report disclosing its specific rationale for compensation paid to each of the named executives officers in the last fiscal year ("Compensation Committee Report") and the relationship of compensation paid to company performance. Along with a clear understanding of the actual compensation package, this report will provide shareholders a sounder basis for assessing how well directors are representing their interests. Thus informed, shareholders can vote as they deem warranted when called upon either to return the incumbent directors to office, or to approve executive and director compensation plans subject to a shareholder vote.

The proposal will add a new requirement for a compensation committee report on the executive compensation policies and practices applied specifically to awards made to the CEO and the remaining four most highly paid executives during the preceding fiscal year. If the registrant has no standing compensation committee, the report must be furnished by the board of directors or any other board committee to which responsibility for executive compensation decisions has been delegated or assigned. Like the currently required management's

[41] Public Law No. 93–406, 88 Stat. 829 (1974), as amended (29 U.S.C. 1001 *et seq.*).

[42] *See* Item 402(b)(2) of Regulation S–K.

[43] Item 403(b) (incorporated in 14A Item 6(d)).

discussion and analysis ("MD&A"),[44] this report is intended to bring shareholders into the compensation committee or board meeting room and permit them to see and understand the specific decisions made through the eyes of the directors. In particular, disclosure will be mandated of the committee's (or board's or other committee's) consideration of the relationship of each senior executive's compensation to the registrant's performance for that particular year, including a description of the specific elements of performance (*e.g.*, earnings, quality rate, market share) relied on in making the award to the particular executive.

As with the MD&A, to which the Compensation Committee Report is an analogue, the new requirements are intended to result in a very specific discussion, particularized both with respect to the company and to each of the individual named executives. A generalized discussion of compensation practice or policy thus would not comply with the proposed requirements. Boilerplate disclosure that could apply registrant-to-registrant, or year-to-year for the same registrant, likewise would be totally unresponsive to the requirements.

6. *Performance presentation.* To complement the discussion by the compensation committee (or board or other committee) of the relationship of executive compensation to corporate performance in a given fiscal year, registrants will be required to provide a line graph in the form prescribed comparing cumulative total shareholder return with a performance indicator of the overall stock market, the S&P 500 Stock Index, and either a nationally recognized industry index or a registrant-constructed peer group index [45] over a minimum term of five years.[46] Registrants would be free to use a longer time frame. To illustrate:

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[44] *See* Item 303 of Regulation S-K [17 CFR 229.303].

[45] Total shareholder return in a given year equals total dividends paid out and the year-end stock price less the previous year-end stock price (adjusted as necessary for stock dividends and splits) divided by the previous year-end stock price. After converting the earliest year into a base amount, and showing each subsequent year relative to that base, registrants then would compare return against the "market" by charting in the same graph the total shareholder return of the S&P 500 Stock Index and the industry index using the same base.

Cumulative return in a given year equals cumulative dividends paid out since the base year, plus the year-end stock price (adjusted as necessary for stock dividends and splits since the base year), less the base year price, divided by the base year price.

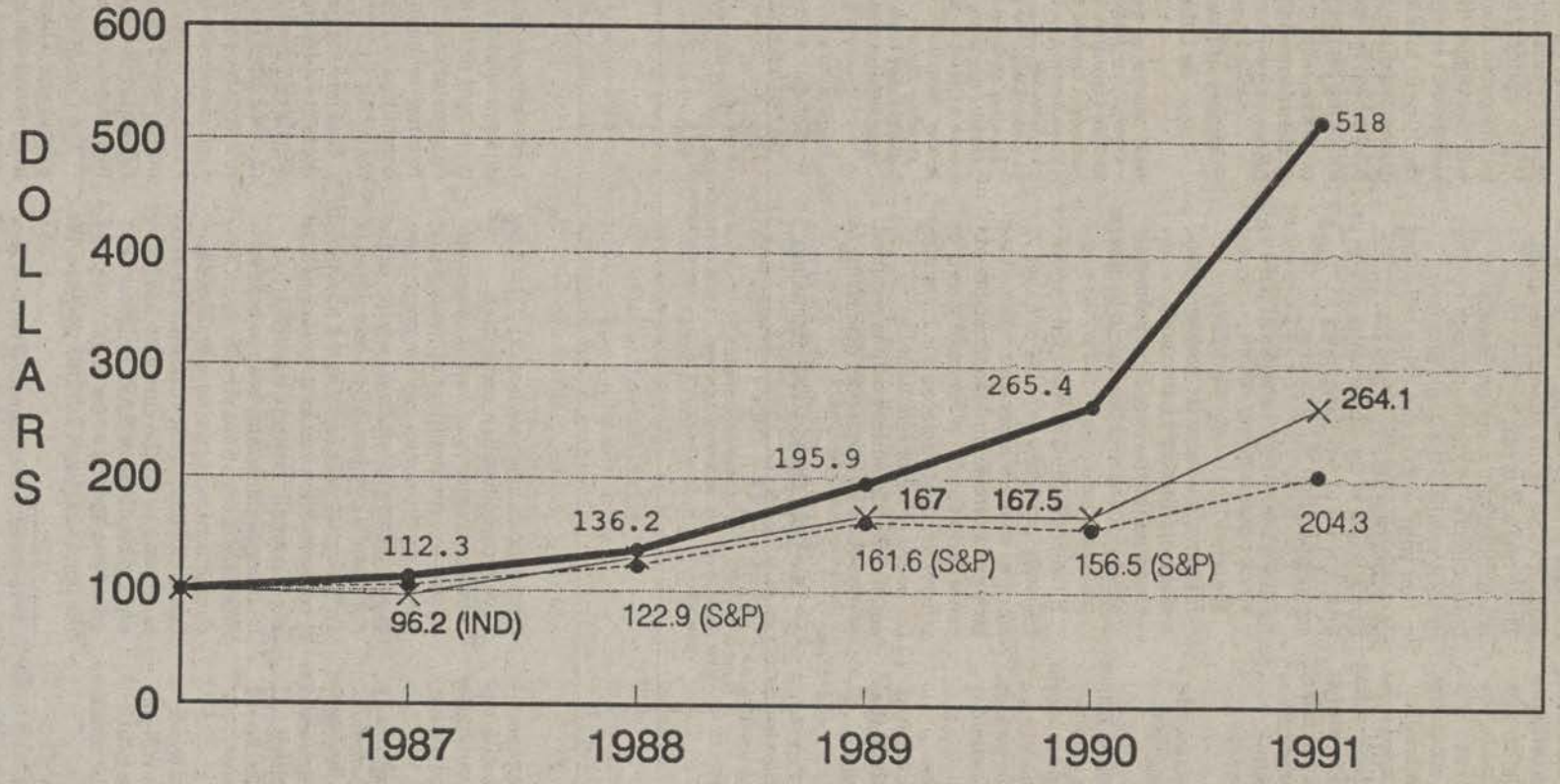
Thus, for example, computing cumulative return for each year of the five year period ending December 31, 1991, would require that for 1987 the closing stock price on December 31, 1987, be added to dividends paid in 1987, minus the stock price on December 31, 1986 (the "base year"), divided by the base year price. For 1988, the closing stock price on December 31, 1988, would be added to the cumulative dividends from the base year through December 31, 1988, minus the base year price, divided by the base year price. To the extent a 2 for 1 stock split occurred in 1988, the closing stock price on December 31, 1988 would be multiplied by two with a corresponding adjustment in the dividends paid. This process would continue through and including 1991.

Returns may be presented either on a reinvested or noninvested dividend basis. Published figures for total return for the S&P 500 are calculated on a reinvested dividend basis; *i.e.*, dividends are used to purchase more stock. However, registrants may calculate total return for the S&P 500 without assuming reinvested dividends by dividing the sum of the change in the price level of the index and the dividends paid by the index's opening price at the beginning of the fiscal year. Such data may be obtained directly from Standard & Poor's or from a library subscribing to S&P publications. S&P also publishes various industry indices, which are publicly available. In order to preserve comparability between the total return figures, registrants must calculate the return on the S&P 500 Stock Index, any other industry index and the return on its own stock in the same manner.

[46] Academic research suggests a positive significant relationship between annual changes in executive compensation and annual changes in corporate performance. See Jensen & Murphy, Performance Pay and Top-Management Incentives, 98 J. Pol. Econ. 225, 226–27 (1990); R. Lambert D. Larcker, Executive Compensation, Corporate Decision Making, and Shareholder Wealth, reprinted in Executive Compensation: A Strategic Guide for the 1990s 112 (F. Foulkes, ed. 1991). Commentators caution, however, that "[s]uch findings should not be taken to imply that American corporations have attained the optimum in incentive compensation. In fact, the coefficients measuring the correlation between [executive] compensation and shareholder returns, although statistically significant, are rather small." Lambert & Larchner at 112.

ILLUSTRATIVE EXAMPLE

COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN*
JLC CORP, S&P 500 INDEX & RECOGNIZED INDUSTRY INDEX



ASSUMES $100 INVESTED ON DECEMBER 31,1986 IN JLC COMMON STOCK, S&P 500 INDEX & RECOGNIZED INDUSTRY INDEX

* TOTAL RETURN ASSUMES REINVESTMENT OF DIVIDENDS

BILLING CODE 8010-01-C

As noted, registrants would be required to include comparisons to returns on peer group companies. Disclosure would be required of the companies included in the peer group, unless the registrant is using a recognized industry index. In such case, the registrant simply would identify the index used. If the registrant chooses to construct its own peer group index, the returns of each of the component companies must be weighted according to the respective companies' market capitalization. While the proposed rules give registrants flexibility in determining whether to calculate total return with or without the reinvestment of dividends, commenters should address whether registrants should be required to calculate return on a reinvested dividends basis.

Registrants would be free to provide additional presentations using other measures of performance for comparable periods. For example, where the Compensation Committee Report indicates reliance on specified corporate performance criteria in formulating senior executive compensation awards, the registrant may choose to include graphs based on such criteria.

Comment is requested on the proposed comparative presentation of the return to shareholders. Should the Commission require additional presentations of performance; *e.g.*, return on equity?

7. *Report on option repricing.* One of the current compensation practices that has been subject to substantial criticism is the repricing of options to lower the exercise price following a decline in the market value of the shares after grant. These repricings can be done by amendment of the option directly, or indirectly; for example, through option or SAR swaps—the grant of a new option with an exercise price reflecting the lower market value and the cancellation of the underwater option or SAR. Critics of repricing have complained that the practice:

—Permits executives to benefit from stock price declines while shareholders incur real losses;
—Effectively eliminates whatever risk stock options may have; and
—Undermines the long-term nature of stock options and the link to long-term performance.

If the company has repriced options or freestanding SARs payable in either stock or cash, or otherwise reduced the terms of exercise through amendment, cancellation and replacement grants or otherwise, the compensation committee (or board or other functionally equivalent committee) will be required to provide a signed report discussing in detail the reasons for such adjustments. As noted above, shareholders have substantial reservations about repricing of options, and clearly are interested in the reasons underlying such action. As part of this report, extensive information concerning repricing practices in the prior 10 years also would be required. While repricing transactions effected before publication of these proposals will not trigger the mandated disclosure, subsequent repricing action will result in the 10-year look back, and thus require disclosure of all repricing of options or SAR's held for executive officers, including repricings prior to publication of this release.

The required tables are set forth below.

Summary of Executive Option Repricing or Other Adjustment

Total Number of Options Outstanding Over 10-Year Period	_____
10-Year Cumulative Percentage of Outstanding Options Held by CEO that Were Repriced or Otherwise Adjusted or Amended	_____
10-Year Cumulative Percentage of Outstanding Options Held by Executive Officers that Were Repriced or Otherwise Adjusted or Amended	_____
10-Year Cumulative Percentage of Outstanding Options Held by Other Employees that Were Repriced or Otherwise Adjusted or Amended	_____

TEN-YEAR OPTION/SAR REPRICING

Name	Date	Number of options/ SAR repriced or amended	Market price of stock at time of repricing or amendment ($)	Exercise price at time of repricing or amendment ($)	New exercise price (#)	Length of original option term remaining at date of repricing or amendment

Comment is solicited on the report and information required. Is additional information required? Are there similar transactions that warrant comparable treatment?

8. *Report on relationships of compensation committee or board members with registrant.* Additional information concerning the relationships between compensation committee members (or all members of the board or other functionally equivalent committee, in the absence of a compensation committee) and the registrant and related entities will be required in those situations in which shareholders may have greater concerns about the independence of the compensation setting process. This additional information is proposed to be required where (1) the company (other than a small business issuer) [47] does not have a compensation committee comprised entirely of outside directors; (2) any executive officer of the registrant serves on the compensation committee of a company of which a member of the registrant's compensation committee is an executive officer, or in the absence of a compensation committee (if registrant is not a small business issuer), a member of the board, is an executive officer of a registrant whose compensation committee (or, if none, board) includes executive officers of the registrant; or (3) the company has repriced options or SARs to lower or otherwise reduce terms of exercise in the last fiscal year. For this purpose, the term "outside director" refers to a director who is not an employee of the registrant or its affiliates. In such circumstances, extensive information bearing on the independence of the committee or board members will be required.

Comment is requested as to whether there are additional situations that should require the enhanced disclosure of committee (or board) members relationships with the registrant. Should such disclosure be required, for example, where the registrant's CEO sits on the board of another company, the CEO of which is a member of the registrant's compensation committee?

The Commission is proposing to except small businesses from the heightened disclosure of relationships where triggered by the absence of a

[47] For the applicable definition of this term, see n. 29, *supra*.

compensation committee composed entirely of non-employee directors, or cross-board membership where there is no compensation committee. The proposed exception reflects a recognition that small businesses frequently do not have outside directors to the same degree as larger companies. Comment is requested as to the appropriateness or necessity of such exceptions for small business issuers, and the appropriateness of the definition of small business issuer.

Comment is also requested as to whether the term "outside director" should be defined to exclude directors that would not meet the standard of independence set by the New York Stock Exchange for membership on listed companies' audit committees.[48] Are there other relationships that should fall outside the scope of the term "outside director"?

The proposed disclosure of relationships would be required under the title of relationships of compensation committee members with the registrant. The information proposed to be required would include:

Identification of all interlocking compensation committee (or board) memberships

For the previous three fiscal years, all contracts, loans, fees, awards, or financial interests, direct or indirect (whether contingent or fixed), in excess of an aggregate amount of $60,000 between the registrant or any of its affiliates and the committee (or board) member.

A description of any means by which, directly or indirectly, each member of the compensation committee (or board) could benefit from actions of the registrant or any of its executive officers.

A description of all discussions between any senior executive officer of the registrant and each member of the compensation committee (or board) with an interlocking relationship concerning compensation matters pertaining to either company or entity.

[48] See section 303.00 of the New York Stock Exchange Manual, requiring:

[A]n Audit Committee comprised solely of directors independent of management and free from any relationship that, in the opinion of its Board of Directors, would interfere with the exercise of independent judgment as a committee member. Directors who are affiliates of the company or officers or employees of the company or its subsidiaries would not be qualified for Audit Committee membership. A Director who was formerly an officer of the company or any of its subsidiaries may qualify for membership even though he may be receiving pension or deferred compensation payments from the company if, in the opinion of the Board of Directors, such person will exercise independent judgment and will materially assist the function of the committee. However, a majority of the Audit Committee shall be directors who were not formerly officers of the company or any of its subsidiaries.

9. *Director compensation.* No change to director compensation disclosure requirements is proposed. Comment is requested, however, whether separate tables should be mandated for specific items of director compensation, or whether directors should be included with executive officers in the various proposed tables. Should directors who are also employees of the company be included in addition to the CEO and the four most highly compensated executive officers, regardless of whether their annual compensation exceeds the threshold for individualized disclosure? Is additional information with respect to director compensation necessary?

Questions have arisen under the current rules as to their application in the case of "charitable award" or "director legacy" programs.[49] Under such programs, registrants typically agree to make a future donation to one or more charitable institutions in a participating director's name, payable by the registrant upon the director's death or retirement, or some other designated event. Funding vehicles for these programs commonly take the form of corporate-owned insurance policies on the lives of participating directors.

Companies have maintained that these arrangements need not be disclosed, since the directors are not receiving value through the arrangement. Others argue, however, that such arrangements should be disclosed to shareholders since the arrangements clearly are made with the directors in consideration of their board service, the premiums can be considerable, particularly relative to amounts paid annually to directors, and are material in assessing the relationship of directors to the registrant. Based on these considerations, such arrangements in the future will be required to be disclosed pursuant to the requirements of item 402(d). The Commission requests comment on the appropriateness of requiring disclosure of such arrangements. Should Item 402(d) be amended to add a specific requirement for disclosure of any other arrangement entered into with the director in consideration of board service?

10. *Information required in connection with shareholder approval of a compensation plan.* The disclosure to be included in the proxy statement if shareholder action is to be taken with respect to any compensation plan is prescribed by Item 10 to Schedule 14A. In addition to extensive disclosure concerning the plan subject to approval, the current requirements require substantial disclosure with respect to all existing compensation plans, and compensation paid thereunder in the prior three fiscal years.

No substantive change is proposed to be made to the information required with respect to the plan to be approved, other than to mandate tabular presentation of amounts that (depending on their determinability) will be paid in the future, or would have been paid in the past. Registrants would indicate in a footnote whether benefits were computed as having been paid hypothetically in the last year, or estimated as payable in the future, in accordance with the plan formula or other criteria.

Under the proposal, the requirements with respect to disclosure of plans other than the plan(s) subject to a shareholder vote will be eliminated. Similarly, given the proposed revision of Item 402 compensation disclosure requirements, the additional requirements under Item 10 with respect to compensation awarded, paid or accrued in the past three years is proposed to be eliminated. Those commenters who believe that the three-year data on all existing plans that will be presented in the proposed Summary Table would not suffice to meet shareholders' informational needs when solicited to vote on a plan should indicate what other compensation information is necessary to disclose on a three-year basis, or what additional plan information is appropriate. Would it be necessary or appropriate, for example, that Item 10 mandate that each table required under Item 402 cover the last three years, when a new benefit plan is to be voted upon?

If the plan to be acted upon is set forth in a written document, existing Item 10 requires that three copies of this document be filed with the preliminary proxy statement and form of proxy. Comment is requested as to whether the Commission should revise this requirement to mandate filing of the written plan document with the definitive proxy statement, thus making the plan more readily available to the public.

B. Form 10–K Compensation Disclosure

No change is proposed to the Item 11—Executive Compensation of Form 10–K, other than a technical revision to reflect the proposed amendment to Item 10 of Schedule 14A. However, with the proposed deletion of the mandatory plan descriptions from existing Item 402, the Commission requests comment as to whether the Item should be amended to require an itemization of all benefit

[49] See "Lure of Legacies Perks Up Directors," Wall St. J., Sept. 28, 1992, at B1, B7.

plans required to be filed as exhibits, and identification of the Commission filing with which a particular plan has filed in exhibit form. Should the Item be amended to require a summary of all employee benefit plans that are not broad-based? Should registrants be required to refile the entire plan in the case of material amendments? Are other revisions necessary or appropriate in view of the proposed amendments to Item 402 of Regulation S–K and Item 10 of Schedule 14A?

III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments to Item 402 of Regulation S–K and related rules and regulations, as well as on other matters that might have an impact on the proposals set out in this release, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment is requested as to the potential impact of the proposals on such matters as tax planning and regulatory burdens from the viewpoint of the public, as well as the entities or persons making filings with the Commission. These comments will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[50] The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[51] Comment letters should refer to File No. S7–16–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information from the public. It appears to the Commission that the benefit to be gained by amending existing compensation disclosure requirements to require registrants to provide clear and useful information to shareholders outweighs the costs associated with implementing these proposals.

[50] 15 U.S.C. 77s(a).

[51] 15 U.S.C. 78w(a).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed revisions. A copy of the Analysis may be obtained from Catherine Dixon, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

The analysis notes that the proposed rules may have an impact on small entities. However, the Commission notes that proposed Regulation S–B, applicable to small business issuers,[52] may not incorporate the changes proposed for Regulation S–K. As part of the effort to facilitate capital creation by small businesses and reduce compliance burdens under the federal securities laws, the Commission proposed earlier this year, among other initiatives, Regulation S–B, a simplified regulatory scheme for "small business issuer[s]." Proposed Regulation S–B adopts the current disclosure scheme of Form S–18, which essentially mirrors present Item 402 of Regulation S–K. Comment is requested on whether the proposals should extend to issuers falling within the proposed definition of small business issuer. Should the definition be expanded solely for purposes of the proposed Item 402 and Schedule 14A revisions to exempt a broader class of issuers, or instead to limit any such exemption to the smallest issuers, as defined by an asset or market capitalization test?

Comment is solicited on the impact of the proposed revisions on small entities. Should the proposed disclosure revisions be modified in any way to address the needs of small businesses, however defined?

VI. Statutory Basis

The amendments contained herein are being proposed pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

[52] *See* Securities Act Rel. No. 6924 (March 11, 1992) [57 FR 9768], *supra* n.29.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, and 80b–11, unless otherwise noted.

2. By revising § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) *General.* (1) All information disclosed pursuant to this section shall be presented in a clear, concise and understandable fashion.

(2) This section requires disclosure of all plan and non-plan compensation awarded or paid to, or earned by, the named executive officers and executive group designated under paragraph (a)(3) of this section, whether by or on behalf of the registrant and its subsidiaries, during the applicable fiscal year(s).

Instruction to Item 402(a)(2)

The term "plan" includes, but is not limited to, the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights ("SARs"), warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of officers or directors of the registrant and that are available generally to all salaried employees.

(3) *Persons covered.* Disclosure shall be provided pursuant to this section for:

(i) The registrant's Chief Executive Officer ("CEO"), or any individual acting in a similar capacity, and each of the registrant's other four most highly compensated executive officers, whose annual compensation computed in accordance with paragraph (b)(2)(ii) of this section exceeds $100,000 (the "named executive officer"); *provided, however,* that information with respect to the registrant's CEO or any individual

acting in a similar capacity shall be included without regard to the specified threshold; and

(ii) all executive officers as a group (the "executive group").

Instructions to Item 402(a)(3)

1. Registrants are reminded that it may be appropriate in certain circumstances to include an executive officer of a subsidiary in the disclosure required by this section. *See* Rule 3b–7 under the Exchange Act [17 CFR 240.3b–7.]

2. In certain circumstances, it may be appropriate for a registrant not to include in the disclosure required by this section, an individual, other than its Chief Executive Officer, who is one of the registrant's five most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual is the distribution or accrual of an unusually large amount of compensation (such as bonus or commission) that is not part of a recurring arrangement and is unlikely to continue.

3. Provide information on compensation awarded, paid, earned or distributed for the entire fiscal year, even if an individual covered by this paragraph is an executive officer only during a portion of a covered fiscal year. With respect to an individual who becomes for the first time an executive officer whose compensation is to be reported pursuant to this section, it is not necessary to report compensation for prior years that would have been reported pursuant to this section had the individual been included in prior years.

(b) *Summary Table.* (1) *General.* The information specified in paragraph (b)(2) of this section, concerning the compensation awarded or paid to, or earned by, each of the named executives individually and the executive group in the aggregate, during each of the registrant's last three fiscal years shall be provided in a Summary Compensation Table, in the tabular format specified below. All compensation awarded or paid to, or earned by the named executive officers and the executive group during such period shall be included, unless specifically permitted to be excluded by this section.

SUMMARY COMPENSATION TABLE

Year	Name and principal position or number in group	Annual compensation			Long term compensation					
		Salary ($)	Bonus ($)	Other compensation ($)	Restricted stock award(s) $	Accrued dividends on restricted stock ($)	Long-term incentive payouts ($)	Stock options (#)	SARs (#)	Other ($)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
	CEO									
	Group									

(2) The following information shall be provided in the Table:

(i) Name and principal position of each named executive and number of persons in the executive group (column (a));

(ii) Annual compensation (columns (b), (c) and (d)), including:

(A) Dollar value of base salary either paid, or earned but deferred (column (b));

(B) Dollar value of cash and non-cash bonus either paid, or earned but deferred, including bonus stock (column (c)); and

Instructions to Item 402(b)(2)(ii)(A) and (B)

1. Dollar value of annual compensation that a named executive elects to forego in exchange for long-term compensation in the form of restricted stock or stock options need not be included in annual compensation totals, and should be reported as long-term compensation in column (e) or (h), as appropriate. However, a footnote to the appropriate annual compensation column should explain that election and the amount foregone. However, for purposes of determining the most highly paid executive officers pursuant to paragraph (a)(3) of this section, the foregone amount is considered a component of annual compensation for that fiscal year.

2. For non-cash compensation, disclose the fair market value at the time the compensation is awarded, paid or earned.

(C) The dollar value of all other annual compensation, including all forms of cash and non-cash compensation related solely to the covered fiscal year and not properly categorized as salary or bonus (column (d)). Such compensation shall include the dollar value of:

(*1*) Perquisites and other personal benefits, or securities or property paid or earned during the fiscal year other than pursuant to a plan, unless:

(*i*) With respect to any named executive officer, the aggregate amount of such compensation is the lesser of $25,000 or 10% of the annual salary and bonus reported for such person in columns (b) and (c), and a statement to that effect is included in a footnote to column (d); or

(*ii*) With respect to the executive group, the aggregate amount of such compensation is the lesser of $25,000 times the number of persons in the group or 10% of the annual salary and bonus reported in columns (b) and (c) for the group, and a statement to that effect is included in a footnote to column (d);

(*2*) Annual registrant contributions, payments, or other allocations to vested pension and other retirement plans;

(*3*) Amounts earned, allocated or accrued in the last fiscal year under deferred compensation plans or any other long-term incentive arrangement, including but not limited to dividends or interest during the fiscal year on deferred cash and stock or stock-based compensation (including amounts actually earned with respect to restricted stock, less the amounts reported as earned but deferred in column (f)); and

(*4*) Annual premiums paid or allocated, in whole or part, by the registrant on insurance-funded or any similar deferred compensation arrangement used to compensate a named executive or any member of the executive group.

Instructions to Item 402(b)(2)(ii)(C)

1. All components of the aggregated amounts set forth in column (d), except annual registrant contributions, payments or other allocations to vested pension or other retirement plans, should be identified by type, amount and/or rate in a footnote to the column.

2. With respect to perquisites and other personal benefits, if the amount of specified compensation reported for a named executive officer or the executive group exceeds the established threshold, the entire amount and each type(s) of such other compensation must be disclosed in a footnote pursuant to this paragraph. This compensation shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Annual insurance premiums paid in whole or part by, or on behalf of, the registrant should be disclosed if there is any arrangement or understanding, whether formal or informal, that a future transfer of the underlying policy or other related payment to the executive will be made.

(iii) Long-term compensation (columns (e), (f), (g), (h) and (i)), including;

(A) Dollar value of any restricted stock award (calculated by multiplying the closing stock price on the date of grant by the number of shares awarded) without regard to the contingent nature of the grant (column (e));

(B) Dollar value of dividends earned on restricted stock, but deferred or reinvested (column (f));

(C) Dollar value of all long-term incentive payouts under plans tying compensation to the market price of a security of the registrant, the performance of the registrant or its subsidiaries, or any other performance measure or criterion (column (g));

Instruction to Item 402(b)(2)(iii)(C)

For purposes of column (g), the term "long-term incentive payouts" means any compensation earned, paid, distributed, made or credited, whether in cash or stock, under any plan providing incentives for performance, whether measured by reference to financial performance of the registrant or an affiliate, the performance of the registrant's stock price, or any other measure, over more than one year, other than amounts reportable as restricted stock, options or SARs.

(D) The number of stock options granted, with or without tandem SARs (column (h)); and

(E) The number of freestanding SARs, payable in stock, or payable in stock or cash at the election of the registrant or the executive(s) (column (i)).

Instruction to Item 402(b)(iii)(D) and (E)

If at any time during the last fiscal year, the registrant has adjusted or amended any material term of stock options or freestanding SARs, whether payable in stock or cash, previously awarded to any of the named executive officers or any member of the executive group, whether to lower the original exercise price or otherwise so as to require the registrant to provide the additional disclosure prescribed by Item 402(j)(2)(iii) of this section, the registrant shall add a separate column to the Summary Table, to be entitled "Amended or Repriced Options/SARs," setting out the number of options or freestanding SARs repriced or amended.

(iv) Any other compensation awarded, paid or earned that the registrant believes cannot be reported properly in any other column of the Summary Compensation Table (column (j)).

(A) Any compensation reported in this column should be identified and quantified in a footnote.

(B) Include in this column, and identify in an accompanying footnote, any payments made or credited to any named executive by the registrant or any other person, if any such payment, including all periodic payments or installments, exceeds $60,000, and is made or credited pursuant to a plan or arrangement that results or will result from:

(*1*) The resignation, retirement or any other termination of such individual executive's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant or a change in the executive's responsibilities following a change in control.

General Instruction to Item 402(b)

1. Any form of compensation reported in the Summary Table in a previous fiscal year may be omitted from this table in a later fiscal year.

2. If the registrant has not awarded, paid or distributed any form of compensation covered by a particular column(s), that column may be omitted.

(c) *Option Values Based on Assumed Rates of Common Stock Price Appreciation.* (1) The information specified in paragraph (c)(2) of this section, concerning the potential realizable dollar value of grants of options and freestanding SARs made in the registrant's last fiscal year, shall be provided in the tabular format specified below:

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

Name	Strike price above market price at grant N% ($)	50% ($)	100% ($)	200% ($)
(a)	(b)	(c)	(d)	(e)
CEO				
#1				
#2				
#3				
#4				
Group				

(2) The option valuation table should include the potential realizable value of options and freestanding SARs granted in the last fiscal year to each named executive, and of all such grants to the executive group in the aggregate, assuming that the market price of the underlying security appreciates in value, from the date of grant to the end of the option or SAR term, at the following rates:

(i) Where options or freestanding SARs were granted with strike prices above the prevailing market price of the underlying security at the date of grant, N%, the percentage by which the strike price exceeded the market price at grant (column (b)). Where the option grant included multiple tranches with strike prices exceeding market price by varying degrees, include an additional column for each additional tranche.

(ii) 50% (column (c));

(iii) 100% (column (d)); and

(iv) 200% (column (e)).

Instructions to Item 402(c)

1. The potential realizable dollar value of each option or SAR grant for each of columns (b), (c), (d) and (e), shall be the product of: (a) the difference between (x) the product of the per-share market price at the time of the grant and the sum of 1 plus the stock price appreciation rate (N%, 50%, 100% or 200% for each of the columns (b), (c), (d) and (e), respectively) ("the stock price appreciation rate") applicable to each such column (expressed as a decimal), and (y) the per-share exercise price of the option; and (b), the number of underlying securities at fiscal year end.

2. Potential dollar value information may be provided on an aggregated basis under columns (c)–(e) for all grants made during the fiscal year, at each of the specified stock price appreciation rates.

3. For purposes of this paragraph, the term "SAR" refers to any SAR payable

in stock, or payable in cash or stock at the election of the registrant or the executive(s).

(d) *Stock Option and Stock Appreciation Right Awards.*—(1) *Option/SAR Summary Report.*

(i) The information specified in paragraph (d)(1)(ii) of this section, concerning option (with or without tandem SARs) and freestanding SARs shall be provided in the tabular format specified below, with respect to the registrant's last fiscal year:

OPTION/SAR SUMMARY REPORT

Total Number of Common Shares Outstanding at Fiscal Year-end	
Total Number of Common Shares Authorized To Be Granted as Options or SARs	
Percentage of Total Common Shares Outstanding Authorized	
Total Number of Options or SARs Granted To Date Under Current Authorization	
Percentage of Total Authorizations	
Total Number of Options or SARs Granted in Fiscal Year	
Total Number of Options or SARs Granted to Named Executives in Last Fiscal Year	
Percentage of Total Number of Options or SARs Granted to Named Executive Officers	
Total Number of Options or SARs Granted to CEO in Last Fiscal Year	
Percentage of Total Number of Options or SARs Granted to CEO in Last Fiscal Year	
Total Number of Options or SARs Granted to Executive Group in Last Fiscal Year	
Percentage of Total Options or SARs Granted to Executive Group in Fiscal Year	

(ii) The Table shall include, for each type of security underlying options and freestanding SARs granted as executive compensation in the registrant's last fiscal year:

(A) The number of securities outstanding at the end of the prior fiscal year;

(B) The number of securities authorized to be granted as options or freestanding SARs;

(C) The percentage of outstanding securities authorized to be granted as options or freestanding SARs;

(D) The number of options or freestanding SARs granted as of the prior fiscal year under the current authorization;

(E) The percentage of authorized options or freestanding SARs granted as of the end of the registrant's last fiscal year;

(F) The number of options or freestanding SARs granted in the prior fiscal year;

(G) The number of options or freestanding SARs granted to the named executives in the prior fiscal year;

(H) The percentage of the prior fiscal year's options or freestanding SARs granted to the named executives;

(I) The number of options or freestanding SARs granted to the CEO or any executive with a comparable position in the prior fiscal year;

(J) The percentage of the prior fiscal year's options or freestanding SARs granted to the CEO or any executive with a comparable position;

(K) The number of options or freestanding SARs granted to the executive group; and

(L) The percentage of the prior fiscal year's options or freestanding SARs granted to the executive group.

Instruction to Item 402(d)

For purposes of this paragraph, the term "SAR" refers to any SAR payable in stock, or payable either in stock or cash at the election of the registrant or the executive-recipient.

(2) *Individual Option and SAR Grants.* (i) The information specified in paragraph (d)(2)(ii) of this section, concerning individual grants of stock options, whether alone or in tandem with SARs, and freestanding SARs, made during the prior fiscal year to each of the named executives, with aggregated grant information to be provided for the executive group, shall be provided in the tabular format specified below:

INDIVIDUAL GRANTS IN THE LAST FISCAL YEAR

Name (a)	Date (b)	Options granted (#) (c)	SARs granted (#) (d)	Exercise or base price ($/sh) (e)	Market price at grant ($/sh) (f)	Unconditional vesting date (g)	Expiration date (h)
CEO	(1)						
	(2)						
	(3)						
#1	(1)						
	(2)						
	(3)						
#2	(1)						
	(2)						
	(3)						
#3	(1)						
	(2)						
	(3)						
#4	(1)						
	(2)						
	(3)						
Group							

(ii) The Table shall include, with respect to each grant to a named executive and aggregated grants to the executive group:

(A) The name of the executive, or number in the group (column (a));

(B) The date of each grant (column (b));

(C) The number of options granted, specifying the title of the security subject to each grant in a footnote (column (c));

(D) The number of freestanding SARs granted, specifying the title of the securities subject to each grant in a footnote (column (d));

(E) The per share exercise or base price of the option or freestanding SAR granted (column (e));

(F) The closing market price per share of the underlying security on the date of grant (column (f));

(G) The date at which the option or freestanding SAR vests unconditionally (column (g)); and

(H) The expiration date of the option or freestanding SAR (column (h)).

Instructions to Item 402(d)(2)

1. A footnote to the table should describe any additional terms of the grant, such as SARs granted in tandem with options, or performance-based conditions to exercisability.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or payable in either stock or cash at the election of the registrant or the executive-recipient.

3. A description should be included in a footnote to the table of any risk-diminishing features or tax reimbursement arrangements relating to a particular grant.

4. If more than one grant of options or freestanding SARs is made to a named executive during the fiscal year, a separate line(s) should be added to assure disclosure of each such grant.

5. This table should not include any options granted in connection with a option repricing transaction disclosed pursuant to Paragraph (j)(2)(iii) of this Item.

6. For purposes of determining the grant-date market price of the security underlying options or freestanding SARs, where that security either is not traded or is thinly traded, registrants should use book value for non-traded securities and, for thinly traded securities, the market price as of the most recent available date, with an explanatory footnote if the registrant believes this price is not representative of the value of the security.

7. Continued employment with the registrant shall not be deemed a condition of vesting for purposes of the vesting date disclosure required in column (g).

(3) *Individual Option and SAR Exercises.* (i) The information specified in paragraph (d)(3)(ii) of this section, for each individual exercise of stock options, alone or in tandem with SARs, and freestanding SARS, made during the most recent fiscal year by each of the named executives, with aggregated information for the executive group, shall be provided in the tabular format specified below:

INDIVIDUAL EXERCISES IN THE LAST FISCAL YEAR

Name (a)	Shares acquired on exercise (#) (b)	Year granted (c)	Year of expiration (d)	Annualized gain ($) (e)	Total gain realized ($) (f)
CEO					
#1					
#2					
#3					
#4					
Group					

(ii) The Table shall include:

(A) The name of the executive officer, or number in the group (column (a));

(B) The number of securities received upon exercise (column (b));

(C) The year the options or freestanding SARs were granted (column (c));

(D) The year the options or freestanding SARs would have expired (column (d));

(E) The annualized aggregate dollar value of gain upon exercise (column (e)); and

(F) The total aggregate dollar value of gain realized upon exercise (column (f)).

Instructions to Item 402(d)(3)

1. Annualized gain for purposes of column (e) may be determined by dividing the total aggregate dollar gain realized by the number of years the option was outstanding. For the purposes of this paragraph, an option should be considered outstanding for a full year in the year of grant and in the year of exercise.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or any SAR payable in either stock or cash at the election of the registrant or the executive(s).

3. If a named executive exercises options or freestanding SARs on more than one occasion during the fiscal year, a separate line(s) should be added to assure separate disclosure of each such exercise.

(4) *Unexercised Options (and SARs) Held at Fiscal Year-End.* (i) The information specified in paragraph (d)(4)(ii) of this section concerning all unexercised options and freestanding SARs held at the end of the fiscal year shall be provided in the tabular format specified below:

UNEXERCISED OPTIONS HELD AT FY-END

(a)	(b)		(c)	
Name	Total number unexercised options held at FY-end		Value of unexercised, in-the-money options at FY-end ($)	
	Vested	Unvested	Vested	Unvested
CEO				
#1				
#2				
#3				
#4				
Group				

(ii) The Table shall include:

(A) The name of the executive officer or number in the group (column (a));

(B) The total number of unexercised options or freestanding SARs held at the end of the fiscal year, separately identifying the vested and unvested securities (column (b)); and

(C) The aggregate dollar value of in-the-money, unexercised options or freestanding SARs at the end of the

fiscal year, separately identifying vested and unvested (column (c)).

Instructions to Item 402(d)(4)

1. In-the-money options are options for which the fair market value of the underlying securities exceeds the strike or base price of the option or SAR. Dollar value is calculated by determining the difference between the fair market value of the securities underlying the options and the strike or base price of the options or SARs at fiscal year-end.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or any SAR payable in either stock or cash at the election of the registrant or the executive(s).

(e) *Restricted Stock Awards.* (1) The information specified in paragraph (e)(2) of this section, concerning grants of restricted stock made to the named executives and the executive group during the registrant's most recent fiscal year, shall be provided in the tabular format specified below:

RESTRICTED STOCK TABLE

(a)	(b)	(c)	(d)	(e)
Name	Restricted shares granted in last fiscal year	Length of restricted period	Total number restricted shares held at FY-end	Aggregate market value restricted shares at FY-end ($)
CEO				
#1				
#2				
#3				
#4				
Group				

(2) The Table shall include:

(i) The name of the executive officer or the number in the group (column (a));

(ii) The total number of restricted shares granted (column (b));

(iii) The length of the period during which the granted shares are subject to restrictions or conditions on vesting (column (c));

(iv) The total number of restricted shares held at fiscal year-end (column (d)); and

(v) The aggregate value of the restricted shares held at fiscal year-end (column (e)).

Instructions to Item 402(e)

1. Any applicable restriction or condition on vesting of restricted shares other than the length of the restricted period, including any performance-related conditions, shall be disclosed in a footnote to the table.

2. Information may be provided on an aggregated basis for multiple grants made during the fiscal year to each of the named executives; however, separate disclosure must be made for each such grant, accompanied by an explanatory footnote to the column, if: (a) the terms of two or more grants made to the executive within the fiscal year differ with respect to the restricted period or any other restriction or condition to vesting; or (b) the board of directors or its compensation committee has reserved the right to eliminate or reduce a restriction or condition to a particular award or awards.

3. For purposes of column (e), "aggregate market value" shall be equal to the market value of the unrestricted shares.

(f) *Long-Term Incentive Compensation.*—(1) *Stock Price-Based Plans.*

(i) The information specified in paragraph (f)(1)(ii) of this section, regarding each compensation award or payment to a named executive officer made, or earned or matured but deferred, in the last fiscal year under any long-term incentive compensation plan pursuant to which the measurement of benefits to be received is a function of the market price of the registrant's common stock, with aggregate information provided for the executive group, shall be provided in the tabular format specified below:

STOCK PRICE BASED PLANS—LAST FISCAL YEAR

(a)	Awards			Payouts
	(b)	(c)	(d)	(e)
Name	No. of shares, units or other rights [1]	Grant-date value, if determinable	Performance or other period until maturation or payout	(Dollar or dollar value stock)
CEO				
#1				
#2				
#3				
#4				
Group				

(ii) The Table shall include:

(A) The name of the executive officer or the number in the group (column (a));

(B) The number of units or other instruments granted and, if applicable, the number of shares underlying these units (column (b));

(C) The grant-date value of the units or instruments granted, if determinable (column (c));

(D) The time period until maturation or payout of the award (column (d)); and

(E) The dollar value or amounts paid or distributed, or earned but deferred (column (e)).

Instructions to Item 402(f)(1)

1. Types of plans covered by this paragraph include, but are not limited to, those awarding phantom stock, freestanding, cash-only SARs, restricted stock units, dividend equivalents and performance share units payable solely on the basis of the registrant's stock price performance.

2. Describe in a footnote the material terms of any award not otherwise disclosed in the table, including any performance-based formula or measure.

3. Separate disclosure shall be provided in the table for each award or payout, whether made or deferred, to a named executive, accompanied by an explanatory footnote for each award if required by Instruction 2 to this paragraph.

4. Any amount reported as earned but deferred in a prior fiscal year need not be reported again in the fiscal year in which such amount is actually paid out.

(2) *Non-Stock Price Based Plans.* (i) The information specified in paragraph (f)(2)(ii) of this section, regarding each award or payout of long-term compensation not covered by paragraph (f)(1)(i) of this section, made to a named executive officer in the prior fiscal year, with aggregated information provided for the executive group, shall be set forth in the tabular format specified below:

NON-STOCK PRICE BASED PLANS—LAST FISCAL YEAR

(a)	Awards				Payouts
	(b)	Target value(s) (Max./min./actual)		(e)	(f)
		(c)	(d)		
Name	Award ($/units)	Cash denominated ($) (max./min./actual)	Stock denominated (#) (max./min./actual)	Performance or other period until maturation or payout	(Dollar or dollar value of stock)
CEO					
#1					
#2					
#3					
#4					
Group					

(ii) The Table shall include:

(A) The name of the executive officer or the number in the group (column (a));

(B) The amount of each award in dollars or units (column (b));

(C) The dollar value of the potential payout or range of potential payouts under the awards (maximum, minimum or actual target amount) for cash-denominated award (column (c)).

(D) The dollar value of the potential payout or range of potential payouts under the awards (maximum, minimum or actual target amount) for each stock-denominated award (column (d));

(E) The time period until maturation or payout of the award (column (e)); and

(F) The dollar value of amounts paid or distributed, or earned but deferred (column (f)).

Instructions to Item 402(f)(2)

1. Describe in a footnote to the column the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. If such amount is not reasonably determinable, so indicate by footnote.

2. Separate disclosure shall be provided in the table for each award or payout, whether made or deferred, to a named executive, accompanied by an explanatory footnote as specified in Instruction 1 to this paragraph.

3. Any amount reported as earned but deferred in a prior fiscal year need not be reported again in the fiscal year in which such amount is actually paid out.

(g) *Pension and Other Retirement Plans.*—(1) *Pension Table.* (i) Registrants with one or more defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, shall include a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any supplementary or excess pension plans) in specified compensation and years of service combinations in the format specified below:

PENSION TABLE

Remuneration	Years of service				
	15	20	25	30	35
125,000					
150,000					
175,000					
200,000					
225,000					
250,000					
300,000					

PENSION TABLE—Continued

Remuneration	Years of service				
	15	20	25	30	35
350,000					
400,000					
450,000					
500,000					

(ii) Immediately following the table, registrants should disclose:

(A) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in columns (b) through (d) of the Summary Table required by paragraph (b)(2) of this section, and state the current compensation covered by the plan for any named executive whose covered compensation differs substantially (by more than 10%) from that set forth in columns (b) through (d) of the Summary Table;

(B) The estimated credited years of service for each of the named executives; and

(C) A statement as to the basis upon which benefits are computed (*e.g.*, straight-life annuity amounts), and whether or not the benefits listed in the

Pension Table are subject to any deduction for Social Security or other offset amounts.

(2) *Alternative Pension or Other Retirement Plan Disclosure.* In furnishing the information with respect to defined benefit, actuarial, or any other retirement plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, including but not limited to defined contribution plans, state in clear and concise narrative form:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the named executives or, if such estimated annual benefits are not reasonably determinable, the amounts accrued pursuant to the plan for the accounts of the named executives and the executive group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(h) *Enhanced Beneficial Ownership Table.* (1) The beneficial ownership information specified in paragraph (h)(2) of this section shall be provided in the tabular format specified below:

TOTAL COMMON EQUITY BASED HOLDINGS

(a)	(b)	(c)	(d)
Name	Unrestricted stock beneficially owned, excluding options/SARs	Option shares (#)	Restricted stock (#)
CEO			
#1			
#2			
#3			
#4			
Group			

(2) The Table shall include:

(i) The name of the executive officer or the number of persons in the group (column (a));

(ii) The number of shares of unrestricted stock beneficially owned, excluding options and SARs (column (b));

(iii) The number of shares subject to options and freestanding SARs, whether or not immediately exercisable (column (c)); and

(iv) The number of shares held subject to restricted stock (column (d)).

Instructions to Item 402(h)

1. Other stock-based instruments that are not convertible into shares of the registrant's common equity are not considered shares beneficially owned for the purposes of this paragraph.

2. Beneficial ownership of unrestricted stock for purposes of column (b) shall be determined in accordance with Rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

3. For purposes of this paragraph, the term "SAR" shall be deemed to refer to SARs payable only in stock, and SARs payable in stock or cash at the election of the registrant or the executive.

(i) *Compensation of Directors.*—(1) *Standard Arrangements.* The registrant shall describe any standard arrangement, stating amounts, pursuant to which directors of the registrant are compensated for all services as directors, including any additional amounts payable for committee participation or special assignments.

(2) *Other Arrangements.* The registrant shall describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last fiscal year for services as a director, stating the amount paid and the name of the director.

(j) *Board Compensation Committee Report on Executive Compensation.* (1) The compensation committee of the registrant's board of directors or, in its absence, a committee performing equivalent functions or the board of directors in its entirety, shall provide a clear and concise statement setting forth the specific factors, criteria and goals underlying the committee's decisions on, or approval of, awards and payments of cash and non-cash compensation disclosed under this section as having been granted or paid to, or earned by, each of the named executives in the last fiscal year.

(i) Include a reasonably detailed discussion of the committee's consideration, if any, of how the registrant's performance related to each named executive's compensation for the last fiscal year, describing each element or measure of performance (*e.g.*, earnings, quality rates, market share) that the committee relied upon in deciding upon or approving each such award or payment.

(ii) If the registrant's performance was not a substantial factor in the committee's decision with respect to compensation paid or awarded to a named executive in the last fiscal year, the committee shall so state and identify those factors, criteria or goals that led to or resulted in such decision or approval.

(iii) The required statement shall be made over the name and signature of each member of the compensation committee, or, in its absence, the name and signature of each member of a board committee performing equivalent functions or each member of the entire board of directors.

Instruction to Item 402(j)

The requirements of paragraph (j) of this section in its entirety shall not apply to registration statements filed under the Securities Act of 1933, or to registration statements filed on Form 10 under the Exchange Act.

Instructions to Item 402(j)(1)

1. Registrants should avoid boilerplate language in describing factors, criteria or goals underlying awards or payments of executive compensation.

i. Target levels with respect to the specific quantitative or qualitative performance-related factors considered may, but need not, be disclosed. Registrants are not required to disclose any factors or criteria involving confidential commercial or business information, disclosure of which would result in an adverse effect on the registrant's competitive position.

ii. Non-financial performance measures, including but not limited to shareholder value creation or market share, must be described in reasonable detail.

(2) *Additional Information To Be Furnished by Certain Registrants.* (i) The information specified in paragraph (j)(2)(ii) of this section must be provided by a registrant where:

(A) The registrant did not have a compensation committee comprised entirely of outside directors during the last fiscal year, unless the registrant is a small business issuer;

(B) The registrant's compensation committee includes one or more executive officers of another registrant or other entity upon whose compensation committee (or in the absence of a compensation committee, or board committee performing equivalent functions or the entire board of directors) executive officer(s) of the registrant sit; or, where there is no compensation committee, and the registrant is not a small business issuer, the registrant's board of directors includes one or more executive officers of another registrant or other entity upon whose compensation committee (or in the absence of a compensation committee, a board committee performing equivalent functions or the entire board of directors) executive officers of the registrant sit; or

(C) The registrant during the last three fiscal years has adjusted or amended any material term of stock options or freestanding SARs (payable in stock or

cash) previously awarded to any of the named executives or any member of the executive group, in which case the information specified in paragraph (j)(2)(iii) of this section also must be provided.

Instruction to Item 402(j)(2)

1. For purposes of this paragraph, an "outside" director is a director who does not have an employment or consulting arrangement with the registrant or any of its affiliates, and who is not employed by an entity where an employee of the registrant serves as a member of a committee establishing that entity's compensation policy.

2. For purposes of this paragraph, the term "small business issuer" refers to an issuer that: (i) had revenues of less than $15 million during its last fiscal year; (ii) is not a foreign private issuer or a foreign government; (iii) is not an investment company; and (iv) is not a wholly owned subsidiary of a non small business issuer.

(ii) *Relationships of Compensation Committee Members with Registrant.* The registrant shall:

(A) Disclose any cross-compensation committee or board membership of any of the registrant's executive officers;

(B) Disclose, for the previous three fiscal years, all contracts, loans, fees, awards, or financial interests, direct or indirect (whether contingent or fixed) in excess of an aggregate of $60,000 between the registrant or any of its affiliates and the committee member, or any company or other entity of which the compensation committee member is an officer, director, partner, employee or owner of more than 10% of the common equity of the registrant;

(C) State any means by which, directly or indirectly, each member of the compensation committee (or board) could benefit from actions of the registrant or any of its executive officers; and

(D) Describe all discussions between any of the named executives or any member of the registrant's compensation committee (or board) with an interlocking relationship concerning compensation matters pertaining to either company or entity.

(iii) *Adjustment of Material Terms of Outstanding Options or SARs.* If at any time during the last three fiscal years, the registrant has adjusted or amended any material term of stock options or freestanding SARs (payable in stock or cash) previously awarded to any of the named executives or any member of the executive group, whether to lower the original exercise price when such price exceeded the market price of the underlying securities, or otherwise to reduce the terms of exercise through amendment, cancellation and replacement grants, or any other means:

(A)The compensation committee (or, in the absence of a compensation committee, a board committee performing equivalent functions or the entire board of directors) shall explain in reasonable detail all such adjustments of options and freestanding SARs held by executive officers in the prior 10 years, as well as the basis for any such adjustments.

(B) The information specified in paragraph (j)(2)(iii)(C) of this section, concerning adjustments in the last fiscal year, shall be provided in the tabular format specified below:

OPTION REPRICING OR OTHER MATERIAL ADJUSTMENT OR AMENDMENT

Name and principal position or number in group (a)	Date (b)	No. of options repriced or amended (c)	Market price of stock at time of repricing or amendment ($) (d)	Exercise price at time of repricing or amendment ($) (e)	New exercise price (#) (f)	Length of original option term remaining at date of repricing or amendment (g)

(C) The Table shall include, with respect to each repricing, adjustment or amendment:

(*1*) The name and position of the executive officer (column (a));

(*2*) The date of the transaction (column (b));

(*3*) The number of replacement or amended options or freestanding SARs (column (c));

(*4*) The per share market price of the underlying security at the time of replacement or amendment (column (d));

(*5*) The original strike or base price of the cancelled or amended options or freestanding SARs (column (e));

(*6*) The per share strike or base price of the replacement options or freestanding SARs (column (f)); and

(*7*)The amount of time remaining before the replaced or amended option or SAR would have expired (column (g)).

Instruction to Item 402(j)(2)(iii)(C)

1. A replacement grant is any grant of options reasonably related to any prior option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms, or by repricing previously granted options or SARs. If a corresponding original grant was cancelled in a prior year, information about such grant must nevertheless be disclosed pursuant to this paragraph.

2. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote to the table.

(D) The information specified in paragraph (j)(2)(iii)(E) of this section, regarding any adjustment or amendment of a material term of an option or freestanding SAR, including but not limited to any repricing or cancellation of options and option replacement grant, made during the previous ten fiscal years, shall be provided in the tabular format specified below:

SUMMARY OF EXECUTIVE OPTION REPRICING OR OTHER ADJUSTMENT

Total Number of Options Outstanding Over 10-Year Period	
10-Year Cumulative Percentage of Outstanding Options Held by CEO that Were Repriced or Otherwise Adjusted or Amended	

SUMMARY OF EXECUTIVE OPTION REPRICING OR OTHER ADJUSTMENT—Continued

10-Year Cumulative Percentage of Outstanding Options Held by Executive Officers that Were Repriced or Otherwise Adjusted or Amended	
10-Year Cumulative Percentage of Outstanding Options Held by Other Employees that Were Repriced or Otherwise Adjusted or Amended	

(E) The Summary shall include:

(*1*) The total number of options outstanding and issued over the previous ten fiscal years;

(*2*) The ten-year cumulative percentage of outstanding options held by the registrant's CEO that were repriced or otherwise amended or adjusted;

(*3*) The ten-year cumulative percentage of outstanding options held by all executive officers as a group that were repriced or otherwise amended or adjusted; and

(*4*) The ten-year cumulative percentage of outstanding options held by all other employees that were repriced or otherwise amended or adjusted.

Instructions to Item 402(j)(2)(iii)(E)

1. Percentages should be calculated for a ten-year period regardless of whether the same individual or individuals have served continuously throughout that period.

2. The registrant shall state briefly the type of adjustment or amendment made to the option immediately following the number of options repriced or otherwise amended or adjusted.

3. The term "option" as used in the Summary shall include both stock options and freestanding SARs payable in stock or cash.

(k) *Registrant Performance Presentation.* Provide a line graph comparing the yearly percentage change in a registrant's cumulative total shareholder return (as measured by dividing (a) the sum of (x) the cumulative amount of dividends declared from the base date until the end of the measurement period (assuming no reinvestment of dividends) and (y) the difference between the issuer's share price at the end of the measurement period and at the base date; by (b) the share price at the base date) against the cumulative total return of the S&P's 500 Stock Index and either a nationally recognized industry index or a registrant constructed peer group index for a comparable time period. The graph shall provide a comparison for a minimum of five fiscal years, or, if the class of securities has been registered under section 12 of the Securities Exchange Act of 1934 for a shorter period of time, the period covered by the chart may correspond to that time period.

Instructions to Item 402(k)

1. Registrants should make appropriate adjustments to share prices for splits, stock dividends, and spin-offs.

2. Registrants may graph cumulative total return with or without the reinvestment of dividends. Assuming the reinvestment of dividend would require the appropriate adjustments to the above specified formula. However, to preserve comparability, return data for the registrant, the S&P 500 Stock Index, a national recognized industry index or a registrant constructed peer group and any other benchmark must use the same method of presentation.

3. In constructing the graph, (i) the closing price of the day preceding the beginning of the earliest fiscal year graphed should be converted into a base amount, with cumulative returns for each subsequent fiscal year should be measured as a change from that base and (ii) each fiscal year should be plotted with points showing the cumulative total return as of that period.

4. Registrants must compare total shareholder return against additional performance benchmarks, including either a nationally recognized index for the registrant's principal industry, or a peer group of comparable companies competing in similar lines of business and sharing other business characteristics, constructed by the registrant. If the registrant constructs its own peer group, the identity of those issuers should be disclosed and the returns of each component company of the index must be weighted according to the respective company's stock market capitalization.

5. Registrants may include performance measures in addition to total return, such as return on average common shareholders' equity, so long as the registrant's board compensation committee (or in its absence, a board committee performing equivalent functions or the entire board of directors) describes the link between that measure and the level of executive compensation established in the statement required by paragraph (j)(1) of this Item.

6. This paragraph (k) shall not apply to registration statements filed under the Securities Act of 1933 or to registration statements filed on Form 10 under the Exchange Act.

General Instructions to Item 402

1. *Foreign Private Issuers.* A foreign private issuer may respond to all of Item 402 by reporting the aggregate payments or benefits paid or to be paid to all executive officers as a group. Such registrant shall, however, provide more detailed information if otherwise made publicly available.

2. *Transactions With Third Parties.* This section includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer or the executive group. No information need be given in response to any paragraph of this section as to any such transaction if the transaction has been reported in response to Item 404 of Regulation S–K.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–37, 80b–3, 80b–4 and 80b–11 unless otherwise noted.

4. By amending § 240.14a–101 by revising Item 10 of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 10. Compensation Plans

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans Subject to Securityholder Action.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

Name and position	Plan name	
	Dollar value ($)	Number of units
CEO		
#2		
#3		
#4		
#5		
Executive Group		
Non-Executive Director Group		
Non-Executive Officer Employee Group		

(ii) The table required by paragraph (a)(2)(i) of this Item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

Instruction to New Plan Benefits Table

Additional columns should be added for each plan with respect to which securityholder action is to be taken.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this Item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined in table specified in paragraph (a)(2)(i) of this Item:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of securityholders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the persons and groups specified in paragraph (2)(iii)(A)-(D) of this paragraph, state the nature of the amendments which can be so made.

(b) *Additional Information Regarding Specific Plans Subject to Securityholder Action.* (1) With respect to any pension or retirement plan submitted for securityholder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (g)(1) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

(2)(i) With respect to any plan authorizing grants of options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the registrant; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officer or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions

1. The term "plan" as used in this Item means any plan as defined in paragraph (a)(2) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are filed pursuant to paragraph (c) of Rule 14a–6 (§ 229.14a–6 of this chapter).

4. Paragraphs (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission should be informed, as supplemental information, when the proxy statement is first filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

By the Commission.

Dated: June 23, 1992.

Margaret H. McFarland,

Deputy Secretary.

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